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2012
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SUPPLEMENT
Volume 18

September 2012

Enacted through the 2012 Regular Session
of the Legislature.

Prepared by the Editorial Staff
of the Publisher



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CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September, 2012

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ENACTED THROUGH THE 2012 REGULAR SESSION**

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.



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PUBLISHER'S FOREWORD

Statutes

The 2012 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2012 Regular Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal Series
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

PUBLISHER'S FOREWORD

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2012 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2012

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VOLUME EIGHTEEN

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CHAPTER 1

General Provisions Relative to Corporations

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| SEC. | |
| 79-1-1. | Automatic extension of corporate charters for certain corporations under certain circumstances. |

§ 79-1-1. Automatic extension of corporate charters for certain corporations under certain circumstances.

(1)(a) If a business corporation was created (i) for a limited period of existence, and (ii) before April 18, 1988, the life of the business corporation shall be perpetual if the business corporation continues to do business for thirty (30) days after March 14, 2011.

(b) If a nonprofit corporation was created (i) for a limited period of existence, and (ii) before January 1, 1988, the life of the nonprofit corporation shall be perpetual if the nonprofit corporation continues to do business for thirty (30) days after March 14, 2011.

(2) If a business or nonprofit corporation (a) has a limited period of existence that expired before March 14, 2011, and (b) the business or nonprofit corporation continues to do business for thirty (30) days after March 14, 2011, the life of that corporation shall be perpetual. The corporation's charter and

articles of incorporation shall be deemed to have been automatically amended before the end of the limited period of existence to state that the corporation's life shall be perpetual. No further action on the part of the corporation is necessary to execute the provisions of this subsection.

(3) Any corporation may, after March 14, 2011, amend its articles of incorporation to provide for a limited period of existence.

SOURCES: Codes, 1942, § 5325.5; Laws, 1950, ch. 308, §§ 3, 4; Laws, 1956, ch. 174, § 1; Laws, 2011, ch. 391, § 1, eff from and after passage (approved Mar. 14, 2011.)

Amendment Notes — The 2011 amendment rewrote the section.

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§ 79-4-1.20. Filing requirements.

[Effective until January 1, 2013, this section will read:]

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.

(b) Section 79-4-1.01 et seq. must require or permit filing the document in the Office of the Secretary of State.

(c) The document must contain the information required by Section 79-4-1.01 et seq. It may contain other information as well.

(d) The document must be typewritten or printed, or, if electronically transmitted, it must be in a format that can be retrieved or reproduced by the Secretary of State in typewritten or printed form.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain a corporate seal, an attestation, acknowledgment or verification. A document required or permitted to be filed under this chapter which contains a copy of a signature, however made, is acceptable for filing.

(h) If the Secretary of State has prescribed a mandatory form for the document under Section 79-4-1.21, the document must be in or on the prescribed form.

(i) The document must be delivered to the Office of the Secretary of State for filing. Delivery may be made by electronic transmission if, to the extent and in the manner permitted by the Secretary of State. If it is filed in typewritten or printed form and not transmitted electronically, the Secretary of State may require one (1) exact or conformed copy to be delivered with the document except as provided in Sections 79-4-5.03 and 79-4-15.09.

(j) When the document is delivered to the Office of the Secretary of State for filing, the correct filing fee, and any franchise tax, license fee, or penalty required to be paid therewith by this section or any other law must be paid or provision for payment made in a manner permitted by the Secretary of State.

(k) Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

(2) The facts may include, but are not limited to:

(i) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(ii) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(3) As used in this subsection:

(i) "Filed document" means a document filed with the Secretary of State under any provision of this chapter except Article 15 or Section 79-4-16.21; and

(ii) "Plan" means a plan of domestication, nonprofit conversion, entity conversion, merger or share exchange.

(4) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) The name and address of any person required in a filed document.

(ii) The registered office of any entity required in a filed document.

(iii) The registered agent of any entity required in a filed document.

(iv) The number of authorized shares and designation of each class or series of shares.

(v) The effective date of a filed document.

(vi) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(5) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in subsection (k)(2)(i) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subsection (k)(5) are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

[Effective from and after January 1, 2013, this section will read:]

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.

(b) Section 79-4-1.01 et seq. must require or permit filing the document in the Office of the Secretary of State.

(c) The document must contain the information required by Section 79-4-1.01 et seq. It may contain other information as well.

(d) The document must be typewritten or printed, or, if electronically transmitted, it must be in a format that can be retrieved or reproduced by the Secretary of State in typewritten or printed form.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain a corporate seal, an attestation, acknowledgment or verification. A document required or permitted to be filed under this chapter which contains a copy of a signature, however made, is acceptable for filing.

(h) If the Secretary of State has prescribed a mandatory form for the document under Section 79-4-1.21, the document must be in or on the prescribed form.

(i) The document must be delivered to the Office of the Secretary of State for filing. Delivery may be made by electronic transmission if, to the extent and in the manner permitted by the Secretary of State. If it is filed in typewritten or printed form and not transmitted electronically, the Secretary of State may require one (1) exact or conformed copy to be delivered with the document.

(j) When the document is delivered to the Office of the Secretary of State for filing, the correct filing fee, and any franchise tax, license fee, or penalty required to be paid therewith by this section or any other law must be paid or provision for payment made in a manner permitted by the Secretary of State.

(k) Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

(2) The facts may include, but are not limited to:

(i) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(ii) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(3) As used in this subsection:

(i) “Filed document” means a document filed with the Secretary of State under any provision of this chapter except Article 15 or Section 79-4-16.21; and

(ii) “Plan” means a plan of domestication, nonprofit conversion, entity conversion, merger or share exchange.

(4) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) The name and address of any person required in a filed document.

(ii) [Reserved]

(iii) The registered agent of any entity required in a filed document.

(iv) The number of authorized shares and designation of each class or series of shares.

(v) The effective date of a filed document.

(vi) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(5) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in subsection (k)(2)(i) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subsection (k)(5) are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

SOURCES: Laws, 1987, ch. 486, § 1.20; Laws, 1995, ch. 362, § 1; Laws, 1997, ch. 418, § 1; Laws, 2004, ch. 495, § 1; Laws, 2012, ch. 382, § 20, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment deleted “except as provided in Sections 79-4-5.03 and 79-4-15.09.” from the end of (i); and made minor stylistic changes.

§ 79-4-1.22. Filing service and copying fees; discounts; expedited filing service.

[Effective until January 1, 2013, this section will read:]

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

| Document | Fee |
|---|----------|
| (1) Articles of incorporation | \$ 50.00 |
| (2) Application for use of indistinguishable name | 25.00 |

| | |
|---|----------|
| (3) Application for reserved name | 25.00 |
| (4) Notice of transfer of reserved name | 25.00 |
| (5) Application for registered name | 50.00 |
| (6) Application for renewal of registered name | 50.00 |
| (7) Corporation's statement of change of registered agent or registered office or both | 10.00 |
| (8) Agent's statement of change of registered office for each affected corporation | 10.00 |
| not to exceed a total of | 1,000.00 |
| (9) Agent's statement of resignation | No fee |
| (10) Amendment of articles of Incorporation | 50.00 |
| (11) Restatement of articles of incorporation | 50.00 |
| with amendment of articles | 50.00 |
| (12) Articles of merger or share exchange | 50.00 |
| (13) Articles of dissolution | 25.00 |
| (14) Articles of revocation of dissolution | 25.00 |
| (15) Certificate of administrative dissolution | No fee |
| (16) Application for reinstatement following administrative dissolution | 50.00 |
| (17) Certificate of reinstatement | No fee |
| (18) Certificate of judicial dissolution | No fee |
| (19) Application for certificate of authority | 500.00 |
| (20) Application for amended certificate of authority | 50.00 |
| (21) Application for certificate of withdrawal | 25.00 |
| (22) Certificate of revocation of authority to transact business | No fee |
| (23) Application for reinstatement following administrative revocation | 100.00 |
| (24) Certificate of reinstatement | No fee |
| (25) Annual report | 25.00 |
| (26) Articles of correction | 50.00 |
| (27) Application for certificate of existence or authorization | 25.00 |
| (28) Any other document required or permitted to be filed by Section 79-4-1.01 et seq. | 25.00 |

(b) The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) each time process is served on him under Section 79-4-1.01 et seq. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) One Dollar (\$1.00) a page for copying; and
- (2) Ten Dollars (\$10.00) for the certificate.

(d) The Secretary of State may collect a filing fee greater than the fee set out herein, not to exceed the actual costs of processing the filing, if the form for filing as prescribed by the Secretary of State has not been used.

(e) The Secretary of State may promulgate rules to:

- (1) Reduce the filing fees prescribed in this section or provide for discounts of fees to encourage online filing of documents or for other reasons as determined by the Secretary of State; and
- (2) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary of State may promulgate rules to provide for an additional reasonable filing fee not to exceed Twenty-five Dollars (\$25.00) to be paid by the applicant and collected by the Secretary of State for the expedited filing services.

[Effective from and after January 1, 2013, this section will read:]

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

| Document | Fee |
|--|----------|
| (1) Articles of incorporation | \$ 50.00 |
| (2) Application for use of indistinguishable name | 25.00 |
| (3) Application for reserved name | 25.00 |
| (4) Notice of transfer or cancellation of reserved name | 25.00 |
| (5) Application for registered name | 50.00 |
| (6) Application for renewal of registered name | 50.00 |
| (7) [Reserved] | |
| (8) [Reserved] | |
| (9) [Reserved] | |
| (10) Amendment of articles of Incorporation | 50.00 |
| (11) Restatement of articles of incorporation | 50.00 |
| with amendment of articles | 50.00 |
| (12) Articles of merger or share exchange | 50.00 |
| (13) Articles of dissolution | 25.00 |
| (14) Articles of revocation of dissolution | 25.00 |
| (15) Certificate of administrative dissolution | No fee |
| (16) Application for reinstatement following administrative dissolution | 50.00 |
| (17) Certificate of reinstatement | No fee |
| (18) Certificate of judicial dissolution | No fee |
| (19) Application for certificate of authority | 500.00 |
| (20) Application for amended certificate of authority | 50.00 |
| (21) Application for certificate of withdrawal | 25.00 |
| (22) Certificate of revocation of authority to transact business | No fee |
| (23) Application for reinstatement following administrative revocation | 100.00 |
| (24) Certificate of reinstatement | No fee |
| (25) Annual report | 25.00 |
| (26) Articles of correction | 50.00 |
| (27) Application for certificate of existence or authorization | 25.00 |
| (28) Any other document required or permitted to be filed by | |

Section 79-4-1.01 et seq.25.00

(b) The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) each time process is served on him under Section 79-4-1.01 et seq. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) One Dollar (\$1.00) a page for copying; and
- (2) Ten Dollars (\$10.00) for the certificate.

(d) The Secretary of State may collect a filing fee greater than the fee set out herein, not to exceed the actual costs of processing the filing, if the form for filing as prescribed by the Secretary of State has not been used.

(e) The Secretary of State may promulgate rules to:

- (1) Reduce the filing fees prescribed in this section or provide for discounts of fees to encourage online filing of documents or for other reasons as determined by the Secretary of State; and
- (2) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary of State may promulgate rules to provide for an additional reasonable filing fee not to exceed Twenty-five Dollars (\$25.00) to be paid by the applicant and collected by the Secretary of State for the expedited filing services.

SOURCES: Laws, 1987, ch. 486, § 1.22; Laws, 1991, ch. 509, § 6; Laws, 1994, ch. 536, § 1; Laws, 2009, ch. 530, § 1; Laws, 2010, ch. 375, § 1; Laws, 2012, ch. 382, § 21; Laws, 2012, ch. 481, § 1, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Section 1 of Chapter 481, Laws of 2012, effective January 1, 2013 (approved April 24, 2012), amended this section. Section 21 of Chapter 382, Laws of 2012, effective January 1, 2013 (approved April 17, 2012), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 481, Laws of 2012, which contains language that specifically provides that it supersedes § 79-4-1.22 as amended by Laws of 2012, ch. 382.

Editor’s Note — Laws of 2010, ch. 375, § 2, provides:

“SECTION 2. This act shall take effect and be in force from and after July 1, 2009.”

Amendment Notes — The 2010 amendment, effective July 1, 2009, in (a)(10) through (a)(12), substituted “50.00” for “0.00”; and in (a)(13) and (a)(28), substituted “25.00” for “5.00.”

The first 2012 amendment (ch. 382), rewrote (a)(7) through (a)(9).

The second 2012 amendment (ch. 481) effective January 1, 2013, inserted “or cancellation” in (a)(4) and rewrote (a)(7), (8) and (9).

§ 79-4-1.25. Duty of Secretary of State.

[Effective until January 1, 2013, this section will read:]

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of Section 79-4-1.20, the Secretary of State shall file it.

(b) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in Sections 79-4-5.03 and 79-4-15.09, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

(c) If the Secretary of State refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document;

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

[Effective from and after January 1, 2013, this section will read:]

(a) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of Section 79-4-1.20, the Secretary of State shall file it.

(b) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

(c) If the Secretary of State refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within ten (10) days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document, in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document;

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

SOURCES: Laws, 1987, ch. 486, § 1.25; Laws, 1997, ch. 418, § 4; Laws, 2012, ch. 382, § 22; Laws, 2012, ch. 481, § 2, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Section 2 of Chapter 481, Laws of 2012, effective January 1, 2013 (approved April 24, 2012), amended this section. Section 22 of Chapter 382, Laws of 2012, effective January 1, 2013 (approved April 17, 2012), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 481, Laws of 2012, which contains language that specifically provides that it supersedes § 79-4-1.25 as amended by Laws of 2012, ch. 382.

Amendment Notes — The first 2012 amendment (ch. 382), deleted "except as provided in Sections 79-4-5.03 and 79-4-15.09" preceding "the Secretary of State shall deliver" in the last sentence of (b).

The second 2012 amendment (ch. 481), effective January 1, 2013, deleted “except as provided in Sections 79-4-5.03 and 79-4-15.09” preceding “the Secretary of State shall deliver” in the last sentence of (b); substituted “ten (10)” for “five (5)” preceding “days after the document” in (c); and made minor stylistic changes.

§ 79-4-1.26. Appeal from Secretary of State’s refusal to file document.

[Effective until January 1, 2013, this section will read:]

(a) If the Secretary of State refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal to the chancery court of the county where the corporation’s principal office (or, if none in this state, its registered office) is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State’s explanation of his refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court’s final decision may be appealed as in other civil proceedings.

[Effective from and after January 1, 2013, this section will read:]

(a) If the Secretary of State refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal to the chancery court of the county where the corporation’s principal office is or will be located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State’s explanation of his refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court’s final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 1987, ch. 486, § 1.26; Laws, 2012, ch. 382, § 23, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote the first sentence in (a).

§ 79-4-1.29. Penalty for signing false document.

[Effective until January 1, 2013, this section will read:]

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a misdemeanor punishable by a fine of not to exceed Five Hundred Dollars (\$500.00).

[Effective from and after January 1, 2013, this section will read:]

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a misdemeanor punishable by a fine of not to exceed One Thousand Dollars (\$1,000.00).

SOURCES: Laws, 1987, ch. 486, § 1.29; Laws, 2012, ch. 481, § 3, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “One Thousand Dollars (\$1,000.00)” for “Five Hundred Dollars (\$500.00).”

SUBARTICLE D.

DEFINITIONS.

SEC.

79-4-1.40. Act definitions.

79-4-1.41. Notice.

§ 79-4-1.40. Act definitions.

[Effective until January 1, 2013, this section will read:]

In Section 79-4-1.01 et seq.:

(1) “Articles of incorporation” include amended and restated articles of incorporation and articles of merger.

(2) “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) “Conspicuous” means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) “Corporation” or “domestic corporation” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of Section 79-4-1.01 et seq.

(5) “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission.

(6) “Distribution” means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) “Effective date of notice” is defined in Section 79-4-1.41.

(8) “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(9) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee.

(9AA) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter.

(10) "Entity" includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust and two (2) or more persons having a joint or common economic interest; and state, United States and foreign government.

(11) "Facts objectively ascertainable" outside of a filed document or plan is defined in Section 79-4-1.20(k).

(12) "Filing entity" means an other entity that is of a type that is created by filing a public organic document.

(13) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(14) "Governmental subdivision" includes authority, county, district and municipality.

(15) "Includes" denotes a partial definition.

(16) "Individual" includes the estate of an incompetent or deceased individual.

(17) "Means" denotes an exhaustive definition.

(18) "Notice" is defined in Section 79-4-1.41.

(19) "Person" includes individual and entity.

(20) "Principal office" means the office (in or out of this state) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(21) "Proceeding" includes civil suit and criminal, administrative and investigatory action.

(22) "Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

(23) "Record date" means the date established under Article 6 or 7 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of Section 79-4-1.01 et seq. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(24) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under Section 79-4-8.40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(25) "Shares" means the unit into which the proprietary interests in a corporation are divided.

(26) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(27) “Sign” or “signature” includes any manual, facsimile, conformed or electronic signature.

(28) “State,” when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.

(29) “Subscriber” means a person who subscribes for shares in a corporation, whether before or after incorporation.

(30) “United States” includes district, authority, bureau, commission, department and any other agency of the United States.

(31) “Voting group” means all shares of one or more classes or series that under the articles of incorporation or Section 79-4-1.01 et seq. are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or Section 79-4-1.01 et seq. to vote generally on the matter are for that purpose a single voting group.

(32) “Voting power” means the current power to vote in the election of directors.

[Effective from and after January 1, 2013, this section will read:]

In Section 79-4-1.01 et seq.:

(1) “Articles of incorporation” means the original articles of incorporation, all amendments thereof, and any other documents permitted or required to be filed by a domestic business corporation with the Secretary of State under any provision of this chapter except Section 79-4-16.22. If an amendment of the articles or any other document filed under this chapter restates the articles in their entirety, thenceforth the “articles” shall not include any prior documents.

(2) “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) “Conspicuous” means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text in italics, boldface, contrasting color, capitals or underlined, is conspicuous.

(4) “Corporation” or “domestic corporation” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of Section 79-4-1.01 et seq.

(5) “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and, if authorized in accordance with Section 79-7-1.41, by electronic transmission.

(6) “Distribution” means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) “Documents” means (i) any tangible medium on which information is inscribed, and includes any writing or written instruments, or (ii) an electronic record.

(8) “Domestic unincorporated entity” means an unincorporated entity whose internal affairs are governed by the laws of this state.

(9) “Effective date of notice” is defined in Section 79-4-1.41.

(10) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(11) “Electronic record” means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with Section 79-4-1.41(j).

(12) “Electronic transmission” or “electronically transmitted” means any form or process of communication, not directly involving the physical transfer of paper or another tangible medium, which (i) is suitable for the retention, retrieval and reproduction of information by the recipient, and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with Section 79-4-1.41(j).

(13) “Eligible entity” means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(14) “Eligible interest” means interests or membership.

(15) “Employee” includes an officer but not a director. A director may accept duties that make him also an employee.

(16) “Expenses” means reasonable expenses of any kind that are incurred in connection with a matter.

(17) “Entity” includes domestic and foreign business corporation; domestic and foreign nonprofit corporation; estate; trust; business trust; domestic and foreign unincorporated entity; two (2) or more persons having a joint or common economic interest, and state, United States, and foreign government.

(18) “Facts objectively ascertainable” outside of a filed document or plan is defined in Section 79-4-1.20(k).

(19) “Filing entity” means another entity that is of a type that is created by filing a public organic document.

(20) “Foreign corporation” means a corporation incorporated under a law other than the law of this state, which would be a business corporation if incorporated under the laws of this state.

(21) “Foreign nonprofit corporation” means a corporation incorporated under a law other than the law of this state, which would be a nonprofit corporation if incorporated under the laws of this state.

(22) “Foreign unincorporated entity” means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.

(23) “Governmental subdivision” includes authority, county, district and municipality.

(24) "Includes" denotes a partial definition.

(25) "Individual" means a natural person, and includes the estate of an incompetent or deceased natural person.

(26) "Interest" means either or both of the following rights under the organic law of an unincorporated entity:

(i) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(ii) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(27) "Means" denotes an exhaustive definition.

(28) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation.

(29) "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation incorporated under the laws of this state and subject to the provisions of Section 79-11-101 et seq.

(30) "Notice" is defined in Section 79-4-1.41.

(31) "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

(32) "Person" includes an individual and an entity.

(33) "Principal office" means the office (in or out of this state) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(34) "Proceeding" includes civil suit and criminal, administrative and investigatory action.

(35) "Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities association.

(36) "Qualified director" is defined in Section 79-4-1.43.

(37) "Record date" means the date established under Article 6 or 7 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of Section 79-4-1.01 et seq. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(38) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under Section 79-4-8.40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(39) "Shares" means the unit into which the proprietary interests in a corporation are divided.

(40) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(41) "Sign" or "signature" means, with present intent to authenticate or adopt a document:

(i) To execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or

(ii) To attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

(42) “State,” when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.

(43) “Subscriber” means a person who subscribes for shares in a corporation, whether before or after incorporation.

(44) “Unincorporated entity” means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign government. The term includes a general partnership, limited liability company, limited partnership, business trust, joint-stock association and unincorporated nonprofit association.

(45) “United States” includes district, authority, bureau, commission, department and any other agency of the United States.

(46) “Voting group” means all shares of one or more classes or series that under the articles of incorporation or Section 79-4-1.01 et seq. are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or Section 79-4-1.01 et seq. to vote generally on the matter are for that purpose a single voting group.

(47) “Voting power” means the current power to vote in the election of directors.

(48) “Writing” or “written” means any information in the form of a document.

SOURCES: Laws, 1987, ch. 486, § 1.40; Laws, 1988, ch. 369, § 1; Laws, 1997, ch. 418, § 6; Laws, 2000, ch. 469, § 1; Laws, 2004, ch. 495, § 2; Laws, 2006, ch. 429, § 1; Laws, 2007, ch. 361, § 1; Laws, 2012, ch. 481, § 4, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote (1), (3), (5), (9), (12), (17), (20), (25), (41); added (7) and (8), (10), (11), (13), (14), (21), (22), (26), (28), (29), (31), (36), (44) and (48); and made minor stylistic changes throughout.

§ 79-4-1.41. Notice.

[Effective until January 1, 2013, this section will read:]

(a) Notice under Section 79-4-1.01 et seq. shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(b) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective (i) upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (ii) when electronically transmitted to the shareholder in a manner authorized by the shareholder.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this state) may be addressed to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(e) Except as provided in subsection (c), written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If Section 79-4-1.01 et seq. prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation, or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of Section 79-4-1.01 et seq., those requirements govern.

[Effective from and after January 1, 2013, this section will read:]

(a) Notice under Section 79-4-1.01 et seq. must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under this chapter must be in English.

(b) A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions must be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

(c) Notice or other communication to a domestic or foreign corporation authorized to transact business in this state may be delivered to its registered agent or to the secretary of the corporation at its principal office

shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(d) Notice or other communication may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (j) of this section.

(e) Any consent under subsection (d) of this section may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if (1) the corporation is unable to deliver two (2) consecutive electronic transmissions given by the corporation in accordance with such consent, and (2) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice or other communications; the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(f) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(1) It enters an information-processing system that the recipient has designated or uses for the purpose of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and

(2) It is in a form capable of being processed by that system.

(g) Receipt of an electronic acknowledgement from an information-processing system described in subsection (f) (1) of this section establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(h) An electronic transmission is received under this section even if no individual is aware of its receipt.

(i) Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(1) If in physical form, the earliest of when it is actually received, or when it is left at:

(i) A shareholder's address shown on the corporation's record of shareholders maintained by the corporation under Section 79-4-16.01(c);

(ii) A director's residence or usual place of business; or

(iii) The corporation's principal place of business;

(2) If mailed postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;

(3) If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest when it is actually received or:

(i) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) Five (5) days after it is deposited in the United States mail;

(4) If an electronic transmission, when it is received as provided in subsection (f) of this section; and

(5) If oral, when communicated.

(j) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if (1) the electronic transmission is otherwise retrievable in perceivable form, and (2) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

(k) If Section 79-4-1.01 et seq. prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of Section 79-4-1.01 et seq., those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

SOURCES: Laws, 1987, ch 486, § 1.41; Laws, 1997, ch. 418, § 7; Laws, 2007, ch. 361, § 2; Laws, 2012, ch. 382, § 24; Laws, 2012, ch. 481, § 5, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Section 5 of Chapter 481, Laws of 2012, effective January 1, 2013 (approved April 24, 2012) amended this section. Section 24 of Chapter 382, Laws of 2012, effective January 1, 2013 (approved April 17, 2012) also amended this section. As set out above, this section reflects the language of Section 5 of Chapter 481, Laws of 2012, which contains language that specifically provides that it supersedes § 79-4-1.41 as amended by Laws of 2012, ch. 382.

Amendment Notes — The first 2012 amendment (ch. 382), deleted “at its registered office” preceding “or to the secretary of the corporation” in (d).

The second 2012 amendment (ch. 481), effective January 1, 2013, rewrote the section.

ARTICLE 2.

INCORPORATION.

SEC.

79-4-2.02. Articles of incorporation.

§ 79-4-2.02. Articles of incorporation.

[Effective until January 1, 2013, this section will read:]

(a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of Section 79-4-4.01;

(2) The number of shares the corporation is authorized to issue and any information concerning the authorized shares as required by Section 79-4-6.01;

(3) The street address of the corporation’s initial registered office and the name of its initial registered agent at that office; and

(4) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting and regulating the powers of the corporation, its board of directors and shareholders; and

(iv) A par value for authorized shares or classes of shares;

(3) Any provision that under Section 79-4-1.01 et seq. is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(i) The amount of a financial benefit received by a director to which he is not entitled;

(ii) An intentional infliction of harm on the corporation or the shareholders;

(iii) A violation of Section 79-4-8.33; or

(iv) An intentional violation of criminal law; and

(5) A provision permitting or making obligatory indemnification of a director for liability as defined in Section 79-4-8.50(5) to any person for any action taken, or any failure to take any action, as a director, except liability for:

(i) Receipt of a financial benefit to which he is not entitled;

(ii) An intentional infliction of harm on the corporation or its shareholders;

(iii) A violation of Section 79-4-8.33; or

(iv) An intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in Section 79-4-1.01 et seq.

(d) For the purposes of this section, a “director” shall include any person vested with the discretion or powers of a director under Section 79-4-7.32.

(e) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with Section 79-4-1.20(k).

[Effective from and after January 1, 2013, this section will read:]

(a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of Section 79-4-4.01;

(2) The number of shares the corporation is authorized to issue and any information concerning the authorized shares as required by Section 79-4-6.01;

- (3) The information required by Section 79-35-5(a); and
- (4) The name and address of each incorporator.
- (b) The articles of incorporation may set forth:
 - (1) The names and addresses of the individuals who are to serve as the initial directors;
 - (2) Provisions not inconsistent with law regarding:
 - (i) The purpose or purposes for which the corporation is organized;
 - (ii) Managing the business and regulating the affairs of the corporation;
 - (iii) Defining, limiting and regulating the powers of the corporation, its board of directors and shareholders; and
 - (iv) A par value for authorized shares or classes of shares;
 - (3) Any provision that under Section 79-4-1.01 et seq. is required or permitted to be set forth in the bylaws;
 - (4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:
 - (i) The amount of a financial benefit received by a director to which he is not entitled;
 - (ii) An intentional infliction of harm on the corporation or the shareholders;
 - (iii) A violation of Section 79-4-8.33; or
 - (iv) An intentional violation of criminal law; and
 - (5) A provision permitting or making obligatory indemnification of a director for liability as defined in Section 79-4-8.50(5) to any person for any action taken, or any failure to take any action, as a director, except liability for:
 - (i) Receipt of a financial benefit to which he is not entitled;
 - (ii) An intentional infliction of harm on the corporation or its shareholders;
 - (iii) A violation of Section 79-4-8.33; or
 - (iv) An intentional violation of criminal law.
- (c) The articles of incorporation need not set forth any of the corporate powers enumerated in Section 79-4-1.01 et seq.
- (d) For the purposes of this section, a “director” shall include any person vested with the discretion or powers of a director under Section 79-4-7.32.
- (e) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with Section 79-4-1.20(k).

SOURCES: Laws, 1987, ch. 486, § 202; Laws, 1991, ch. 509, § 1; Laws, 1994, ch. 417, § 1; Laws, 1996, ch. 459 § 1; Laws, 2004, ch. 495, § 3; Laws, 2012, ch. 382, § 25, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “information required by Section 79-35-5(a)” for “street address of the corporation’s initial registered office and the name of its initial registered agent at that office” in (a)(3).

ARTICLE 3.

PURPOSES AND POWERS.

§ 79-4-3.02. General powers.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

2. Suit by dissolved corporation.

I. UNDER CURRENT LAW.

2. Suit by dissolved corporation.

In a property damage case, because there was no authority cited for the proposition that an action filed on behalf of a dissolved corporation should have been treated as being filed against a partner-

ship, appellate review of the issue was precluded. In addressing the merits of the issue, it was determined that a dissolved corporation could not have been a real party in interest because it had been dissolved more than eight years before the alleged incident took place, and there was an opportunity given to substitute the real party in interest. *Funderburg v. Pontotoc Elec. Power Ass'n*, 6 So. 3d 439 (Miss. Ct. App. 2009).

ARTICLE 4.

NAME.

SEC.

79-4-4.01. Corporate name.

79-4-4.02. Reserved name.

§ 79-4-4.01. Corporate name.

[Effective until January 1, 2013, this section will read:]

(a) A corporate name:

(1) Must contain the word “corporation,” “incorporated,” “company” or “limited,” or the abbreviation “corp.,” “inc.,” “co.” or “ltd.” or words or abbreviations of like import in another language; and

(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by Section 79-4-3.01 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under Section 79-4-4.02 or 79-4-4.03;

(3) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable; and

(4) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his records from one or more of the

names described in subsection (b). The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation;

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) Sections 79-4-1.01 et seq. do not control the use of fictitious names.

[Effective from and after January 1, 2013, this section will read:]

(a) A corporate name:

(1) Must contain the word "corporation," "incorporated," "company" or "limited," or the abbreviation "corp.," "inc.," "co." or "ltd." or words or abbreviations of like import in another language; and

(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by Section 79-4-3.01 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) The fictitious name adopted by a foreign corporation or foreign limited liability company authorized to transact business in this state because its real name is unavailable;

(3) The corporate name of a nonprofit corporation incorporated or authorized to transact business in this state;

(4) The name of a limited partnership, limited liability partnership or limited liability company that is organized or registered under the laws of this state and which has not been dissolved; and

(5) A name that is reserved or registered in the Office of the Secretary of State for any of the entities named in subsection (b) of this section which reservation or registration has not expired.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his records from one or more of the names described in subsection (b). The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) Section 79-4-1.01 et seq. does not control the use of fictitious names.

SOURCES: Laws, 1987, ch. 486, § 4.01; Laws, 2012, ch. 481, § 6, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, deleted (b)(2), which formerly read “A corporate name reserved and registered under Section 79-4-4.02 or 79-4-4.03;” redesignated former (b)(3) as (b)(2) and inserted “or foreign limited liability company” preceding “authorized to transact business;” redesignated former (b)(4) as (b)(3) and substituted “nonprofit” for “not-for-profit;” added (b)(4) and (b)(5); and made minor stylistic changes.

§ 79-4-4.02. Reserved name.

[Effective until January 1, 2013, this section will read:]

(a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a nonrenewable 180-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

[Effective from and after January 1, 2013, this section will read:]

(a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a nonrenewable one-hundred-eighty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

(c) The reservation of a specified name may be cancelled by delivering to the Office of the Secretary of State a notice of cancellation, specifying the name of the reservation to be cancelled and the name and address of the owner or transferee.

(d) Unless the Secretary of State finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of State as required by this section does not conform to law, upon receipt of all filing fees required by law the Secretary of State shall prepare and return to the person who filed the instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State.

(e) A fee as set forth in Section 79-4-1.22(4) of this chapter shall be paid at the time of the reservation of any name and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

SOURCES: Laws, 1987, ch. 486, § 4.02; Laws, 2012, ch. 481, § 7, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, added (c) through (e).

ARTICLE 5.

OFFICE AND AGENT.

§ 79-4-5.01. Registered office and registered agent [Repealed effective January 1, 2013].

SOURCES: Laws, 1987, ch. 486, § 5.01, eff from and after January 1, 1988.

Editor's Note — Laws of 2012, ch. 382, s. 123, effective January 1, 2013, provides: "SECTION 123. Section 79-4-5.01, Mississippi Code of 1972, which provides for a registered agent maintaining a registered office, is repealed."

For the text of this section effective until January 1, 2013, see the bound volume.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

I. Under Current Law.

1. In general.

Evidence was insufficient to establish that a federal district court had diversity of citizenship jurisdiction under 28 U.S.C.S. § 1332(a) over an action an LLC filed in the Circuit Court of Lee County,

Mississippi, alleging that its former chief executive officer (CEO) and one of the CEO's subordinates committed fraud, civil conspiracy, and intentional interference with business relations, and the district court granted the LLC's motion to remand the case to state court. Although the CEO claimed that he had changed his domicile from Mississippi to Alabama, and offered proof that his family lived in Alabama, that he owned real property in Alabama,

and that he had bank accounts in an Alabama bank, virtually all of his professional and business connections were in Mississippi, he represented to the Mississippi Secretary of State's office, pursuant to Miss. Code Ann. § 79-4-5.01, that he was a resident of Mississippi, he maintained membership in a church and a

professional organization in Mississippi, and he was registered to vote in Mississippi and had a Mississippi driver's license at the time the LLC filed its action in state court. *JBHM Educ. Group, LLC v. Bailey*, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 39125 (N.D. Miss. May 8, 2009).

§ 79-4-5.02. Change of registered office or registered agent [Repealed effective January 1, 2013].

SOURCES: Laws, 1987, ch. 486, § 5.02, eff from and after January 1, 1988.

Editor's Note — Laws of 2012, ch. 382, s. 124, effective January 1, 2013, provides: "SECTION 124. Section 79-4-5.02, Mississippi Code of 1972, which provides for the change of the registered office of a registered agent, is repealed.."

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-4-5.03. Resignation of registered agent [Repealed effective January 1, 2013].

SOURCES: Laws, 1987, ch. 486, § 5.03, eff from and after January 1, 1988.

Editor's Note — Laws of 2012, ch. 382, s. 125, effective January 1, 2013, provides: "SECTION 125. Section 79-4-5.03, Mississippi Code of 1972, which provides for the resignation of a registered agent, is repealed.."

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-4-5.04. Service on corporation [Repealed effective January 1, 2013].

SOURCES: Laws, 1987, ch. 486, § 5.04, eff from and after January 1, 1988.

Editor's Note — Laws of 2012, ch. 382, s. 126, effective January 1, 2013, provides: "SECTION 126. Section 79-4-5.04, Mississippi Code of 1972, which provides for service of process on a corporation, is repealed.."

For the text of this section effective until January 1, 2013, see the bound volume.

ARTICLE 6.

SHARES AND DISTRIBUTIONS.

Subarticle B. Issuance of Shares.....79-4-6.20

SUBARTICLE B.

ISSUANCE OF SHARES.

SEC.

79-4-6.20. Subscription for shares before incorporation.

§ 79-4-6.20. Subscription for shares before incorporation.

[Effective until January 1, 2013, this section will read:]

(a) A subscription for shares entered into before incorporation is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty (20) days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to Section 79-4-6.21.

[Effective from and after January 1, 2013, this section will read:]

(a) A subscription for shares entered into before incorporation is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty (20) days after the corporation sends a written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to Section 79-4-6.21.

SOURCES: Laws, 1987, ch. 486, § 6.20; Laws, 2012, ch. 481, § 8, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, inserted “a” preceding “written demand for payment to the subscriber” at the end of (d).

ARTICLE 7.

SHAREHOLDERS.

| | | |
|---------------|----------------------------|-----------|
| Subarticle A. | Meetings..... | 79-4-7.01 |
| Subarticle B. | Voting..... | 79-4-7.20 |
| Subarticle D. | Derivative Procedures..... | 79-4-7.40 |

SUBARTICLE A.

MEETINGS.

| | |
|------------|---|
| SEC. | |
| 79-4-7.03. | Court-ordered meeting. |
| 79-4-7.04. | Action without meeting. |
| 79-4-7.05. | Notice of meeting. |
| 79-4-7.09. | Promote participation in annual and special meetings [Effective January 1, 2013]. |

§ 79-4-7.03. Court-ordered meeting.

[Effective until January 1, 2013, this section will read:]

(a) The chancery court of the county where a corporation’s principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held:

(1) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six (6) months after the end of the corporation’s fiscal year or fifteen (15) months after its last annual meeting or written consent in lieu thereof; or

(2) On application of a shareholder who signed a demand for a special meeting valid under Section 79-4-7.02 if:

(i) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the corporation’s secretary; or

(ii) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

[Effective from and after January 1, 2013, this section will read:]

(a) The chancery court of the county where a corporation’s principal office is located, or the Chancery Court of the First Judicial District of Hinds County,

Mississippi, if the corporation does not have a principal office in this state, may summarily order a meeting to be held:

(1) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting or written consent in lieu thereof; or

(2) On application of a shareholder who signed a demand for a special meeting valid under Section 79-4-7.02 if:

(i) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

SOURCES: Laws, 1987, ch. 486, § 7.03; Laws, 2007, ch. 361, § 5; Laws, 2012, ch. 382, § 26, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote (a).

§ 79-4-7.04. Action without meeting.

[Effective until January 1, 2013, this section will read:]

(a) Action required or permitted by Section 79-4-1.01 et seq. to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records. A unanimous consent signed under this subsection is the act of the shareholders when consents signed by all shareholders have been delivered to the corporation.

(b) The articles of incorporation may provide that any action required or permitted by Section 79-4-1.01 et seq. to be taken at a shareholder's meeting may be taken without a meeting and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the

consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(c) If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by the holders of shares having sufficient votes to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporation action are delivered to the corporation.

(d) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by less than unanimous written consent shall be effective when written consents signed by the holders of shares having sufficient votes to take the action are delivered to the corporation.

(e) If Section 79-4-1.01 et seq. requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than ten (10) days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under Section 79-4-1.01 et seq., would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten (10) days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under Section 79-4-1.01 et seq., would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

(h) An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact.

(i) Delivery of a written consent to the corporation under this section is delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office.

[Effective from and after January 1, 2013, this section will read:]

(a) Action required or permitted by Section 79-4-1.01 et seq. to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records. A unanimous consent signed under this subsection is the act of the shareholders when consents signed by all shareholders have been delivered to the corporation.

(b) The articles of incorporation may provide that any action required or permitted by Section 79-4-1.01 et seq. to be taken at a shareholder's meeting may be taken without a meeting and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(c) If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest date on which a consent delivered to the corporation as required by this section was signed,

written consents signed by the holders of shares having sufficient votes to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporation action are delivered to the corporation.

(d) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by less than unanimous written consent shall be effective when written consents signed by the holders of shares having sufficient votes to take the action are delivered to the corporation.

(e) If Section 79-4-1.01 et seq. requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than ten (10) days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under Section 79-4-1.01 et seq., would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten (10) days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under Section 79-4-1.01 et seq., would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

SOURCES: Laws, 1987, ch. 486, § 7.04; Laws, 2007, ch. 361, § 6; Laws, 2012, ch. 382, § 27; Laws, 2012, ch. 481, § 9, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Section 9 of Chapter 481, Laws of 2012, effective January 1, 2013 (approved April 24, 2012), amended this section. Section 27 of Chapter 382, Laws of 2012, effective January 1, 2013 (approved April 17, 2012), also amended this section. As set out above, this section reflects the language of Section 9 of

Chapter 481, Laws of 2012, which contains language that specifically provides that it supersedes § 79-4-7.04 as amended by Laws of 2012, ch. 382.

Amendment Notes — The first 2012 amendment (ch. 382), deleted “at its registered office” preceding “or to the secretary of the corporation at its principal office” in (i).

The second 2012 amendment (ch. 481), effective January 1, 2013, deleted former (h) and (i) which read: “(h) An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, the shareholder’s agent, or the shareholder’s attorney-in-fact. (i) Delivery of a written consent to the corporation under this section is delivery to the corporation’s registered agent at its registered office or to the secretary of the corporation at its principal office.”

§ 79-4-7.05. Notice of meeting.

[Effective until January 1, 2013, this section will read:]

(a) A corporation shall notify shareholders of the date, time and place of each annual and special shareholders’ meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. Unless Section 79-4-1.01 et seq. or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless Section 79-4-1.01 et seq. or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders’ meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders’ meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under Section 79-4-7.07, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

[Effective from and after January 1, 2013, this section will read:]

(a) A corporation shall notify shareholders of the date, time and place of each annual and special shareholders’ meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to Section 79-4-7.09 for any class or series of shareholders, the notice of such class or series of shareholders shall describe the means of remote communication to be used. Unless Section 79-4-1.01 et seq. or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless Section 79-4-1.01 et seq. or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under Section 79-4-7.07, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

SOURCES: Laws, 1987, ch. 486, § 7.05; Laws, 1988, ch. 369, § 3; Laws, 2012, ch. 481, § 10, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, added the second sentence in (a); and made a minor stylistic change.

JUDICIAL DECISIONS

1. Proper notice.

Trial court did not err by finding that a corporation provided adequate notice of a special meeting to shareholders because the notice provided the location, time, date, and purpose of the shareholders meeting pursuant to Miss. Code Ann.

§ 79-4-7.05(a) and (c), and an attached proxy vote sheet setting forth the voting issues referenced the discussion of the issues in the minutes. *Keene v. Brookhaven Acad., Inc.*, 28 So. 3d 1285 (Miss. 2010).

§ 79-4-7.09. Promote participation in annual and special meetings [Effective January 1, 2013].

(a) Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts, and shall be in conformity with subsection (b) of this section.

(b) Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures:

(1) To verify that each person participating remotely is a shareholder; and

(2) To provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders,

including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with such proceeding.

SOURCES: Laws, 2012, ch. 481, § 11, eff from and after Jan. 1, 2013.

SUBARTICLE B.

VOTING.

SEC.

79-4-7.20. Shareholders' list for meeting.

79-4-7.22. Proxies.

§ 79-4-7.20. Shareholders' list for meeting.

[Effective until January 1, 2013, this section will read:]

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group (and within each voting group by class or series of shares) and show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder beginning two (2) business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent or attorney is entitled on written demand to inspect and, subject to the requirements of Section 79-4-16.02(c), to copy the list during regular business hours and at his expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his agent or attorney to inspect the shareholders' list before or at the meeting (or copy the list as permitted by subsection (b)), the chancery court of the county where a corporation's principal office (or, if none in this state, its registered office) is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

[Effective from and after January 1, 2013, this section will read:]

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group (and within each voting group by class or series of shares) and show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder beginning two (2) business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent or attorney is entitled on written demand to inspect and, subject to the requirements of Section 79-4-16.02(c), to copy the list during regular business hours and at his expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his agent or attorney to inspect the shareholders' list before or at the meeting (or copy the list as permitted by subsection (b)), the chancery court of the county where a corporation's principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

SOURCES: Laws, 1987, ch. 486, § 7.20; Laws, 2012, ch. 382, § 28, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, in (d), deleted "(or, if none in this state, its registered office)" preceding "is located", and inserted "or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state" thereafter.

§ 79-4-7.22. Proxies.

[Effective until January 1, 2013, this section will read:]

(a) A shareholder may vote his shares in person or by proxy.

(b) A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by electronic transmission. An electronic transmission must contain or be accompanied by information from which one can determine that the shareholder, the shareholder's agent or the shareholder's attorney-in-fact authorized the electronic transmission.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for eleven (11) months unless a longer period is expressly provided in the appointment.

(d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is

coupled with an interest. Appointments coupled with an interest include the appointment of:

- (1) A pledgee;
 - (2) A person who purchased or agreed to purchase the shares;
 - (3) A creditor of the corporation who extended it credit under terms requiring the appointment;
 - (4) An employee of the corporation whose employment contract requires the appointment; or
 - (5) A party to a voting agreement created under Section 79-4-7.31.
- (e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(f) An appointment made irrevocable under subsection (d) is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to Section 79-4-7.24 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

[Effective from and after January 1, 2013, this section will read:]

- (a) A shareholder may vote his shares in person or by proxy.
- (b) A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission, and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.
- (c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for eleven (11) months unless a longer period is expressly provided in the appointment.
- (d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (1) A pledgee;
- (2) A person who purchased or agreed to purchase the shares;
- (3) A creditor of the corporation who extended it credit under terms requiring the appointment;

(4) An employee of the corporation whose employment contract requires the appointment; or

(5) A party to a voting agreement created under Section 79-4-7.31.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(f) An appointment made irrevocable under subsection (d) is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to Section 79-4-7.24 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

SOURCES: Laws, 1987, ch. 486, § 7.22; Laws, 1997, ch. 418, § 51; Laws, 2012, ch. 481, § 12, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote the last sentence in (b).

SUBARTICLE D.

DERIVATIVE PROCEDURES.

SEC.

79-4-7.42. Prerequisites to commencing derivative proceeding.

79-4-7.48. Shareholder action to appoint custodian or receiver.

§ 79-4-7.42. Prerequisites to commencing derivative proceeding.

[Effective until January 1, 2013, this section will read:]

No shareholder may commence a derivative proceeding until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) Ninety (90) days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

[Effective from and after January 1, 2013, this section will read:]

No shareholder may commence a derivative proceeding until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) Ninety (90) days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

SOURCES: Laws, 1993, ch. 368, § 5; Laws, 2012, ch. 481, § 13, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, added “delivery of” preceding “the demand was made unless the shareholder” in (2).

§ 79-4-7.48. Shareholder action to appoint custodian or receiver.

[Effective until January 1, 2013, this section will read:]

(a) The chancery court of the county where a corporation’s principal office (or, if none in this state, its registered office) is located may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder where it is established that:

(1) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(2) The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(b) The court:

(1) May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;

(2) Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(3) Has jurisdiction over the corporation and all of its property, wherever located.

(c) The court may appoint an individual or domestic or foreign corporation (authorized to transact business in this state) as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(d) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers,

(1) A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(2) A receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

(e) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(f) The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

[Effective from and after January 1, 2013, this section will read:]

(a) The chancery court of the county where a corporation's principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder where it is established that:

(1) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(2) The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(b) The court:

(1) May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;

(2) Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(3) Has jurisdiction over the corporation and all of its property, wherever located.

(c) The court may appoint an individual or domestic or foreign corporation (authorized to transact business in this state) as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(d) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers,

- (1) A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and
- (2) A receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in the receiver’s own name as receiver in all courts of this state.
- (e) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.
- (f) The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

SOURCES: Laws, 2007, ch. 361, § 7; Laws, 2012, ch. 382, § 29, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote (a).

ARTICLE 8.

DIRECTORS AND OFFICERS.

| | | |
|---------------|---------------------------------------|-----------|
| Subarticle A. | Board of Directors..... | 79-4-8.01 |
| Subarticle B. | Meetings and Action of the Board..... | 79-4-8.20 |
| Subarticle C. | Standards of Conduct..... | 79-4-8.30 |
| Subarticle E. | Indemnification..... | 79-4-8.50 |
| Subarticle F. | Director’s Conflicts of Interest..... | 79-4-8.60 |

SUBARTICLE A.

BOARD OF DIRECTORS.

| | |
|------------|---|
| SEC. | |
| 79-4-8.01. | Requirement for Board of Directors; exception; duties of Board. |
| 79-4-8.05. | Terms of directors generally. |
| 79-4-8.06. | Staggered terms for directors. |
| 79-4-8.07. | Resignation of directors. |
| 79-4-8.09. | Removal of directors by judicial proceeding. |
| 79-4-8.10. | Vacancy on board. |

§ 79-4-8.01. Requirement for Board of Directors; exception; duties of Board.

[Effective until January 1, 2013, this section will read:]

- (a) Except as provided in Section 79-4-7.32, each corporation must have a board of directors.
- (b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed by or under the

direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under Section 79-4-7.32.

[Effective from and after January 1, 2013, this section will read:]

(a) Except as provided in Section 79-4-7.32, each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under Section 79-4-7.32.

SOURCES: Laws, 1987, ch. 486, § 8.01; Laws, 1988, ch. 368, § 7; Laws, 1993, ch. 368, § 2; Laws, 2001, ch. 435, § 6; Laws, 2012, ch. 481, § 14, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, in (b), inserted “the board of directors of the corporation” preceding “and the business and affairs of the corporation”, inserted “shall be” thereafter, and “and subject to the oversight” preceding “of its board of directors.”

§ 79-4-8.05. Terms of directors generally.

[Effective until January 1, 2013, this section will read:]

(a) The terms of the initial directors of a corporation expire at the first shareholders’ meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders’ meeting following their election unless their terms are staggered under Section 79-4-8.06.

(c) A decrease in the number of directors does not shorten an incumbent director’s term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders’ meeting at which directors are elected.

(e) Despite the expiration of a director’s term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

[Effective from and after January 1, 2013, this section will read:]

(a) The terms of the initial directors of a corporation expire at the first shareholders’ meeting at which directors are elected.

(b) The terms of all other directors expire at the next, or if their terms are staggered in accordance with Section 79-4-8.06, at the applicable second or third, annual shareholders’ meeting following their election.

(c) A decrease in the number of directors does not shorten an incumbent director’s term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders’ meeting at which directors are elected.

(e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

SOURCES: Laws, 1987, ch. 486, § 8.05; Laws, 2012, ch. 481, § 15, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote (b).

§ 79-4-8.06. Staggered terms for directors.

[Effective until January 1, 2013, this section will read:]

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two (2) or three (3) groups, with each group containing one-half ($\frac{1}{2}$) or one-third ($\frac{1}{3}$) of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

[Effective from and after January 1, 2013, this section will read:]

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two (2) or three (3) groups, with each group containing one-half ($\frac{1}{2}$) or one-third ($\frac{1}{3}$) of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

SOURCES: Laws, 1987, ch. 486, § 8.06 eff from and after January 1, 1988; Laws, 2001, ch. 435, § 8; Laws, 2012, ch. 481, § 16, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, added "practicable" at the end of the first sentence.

§ 79-4-8.07. Resignation of directors.

[Effective until January 1, 2013, this section will read:]

(a) A director may resign at any time by delivering written notice to the board of directors, its chairman or to the corporation.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

[Effective from and after January 1, 2013, this section will read:]

(a) A director may resign at any time by delivering written notice to the board of directors, or its chair or to the secretary of the corporation.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

SOURCES: Laws, 1987, ch. 486, § 8.07 eff from and after January 1, 1988; Laws, 2012, ch. 481, § 17, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “or its chair or to the secretary of the corporation” for “its chairmen or to the corporation” near the end of (a).

§ 79-4-8.09. Removal of directors by judicial proceeding.

[Effective until January 1, 2013, this section will read:]

(a) The chancery court of the county where a corporation’s principal office (or, if none in this state, its registered office) is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent (10%) of the outstanding shares of any class if the court finds that (1) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation and (2) removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(c) If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

[Effective from and after January 1, 2013, this section will read:]

(a) The chancery court of the county where a corporation’s principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent (10%) of the outstanding shares of any class if the court finds that (1) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, and (2) removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(c) If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

SOURCES: Laws, 1987, ch. 486, § 8.09 eff from and after January 1, 1988; Laws, 2012, ch. 382, § 30, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, in (a), deleted “(or, if none in this state, its registered office)” preceding “is located” and added “or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state” thereafter.

§ 79-4-8.10. Vacancy on board.

[Effective until January 1, 2013, this section will read:]

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The shareholders may fill the vacancy;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under Section 79-4-8.07(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

[Effective from and after January 1, 2013, this section will read:]

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The shareholders may fill the vacancy;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to fill the vacancy if it is filled by the shareholders and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the director.

(c) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under Section 79-4-8.07(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

SOURCES: Laws, 1987, ch. 486, § 8.10; Laws, 1988, ch. 368, § 10; Laws, 2012, ch. 481, § 18, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, added “and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the director” at the end of (b).

SUBARTICLE B.

MEETINGS AND ACTION OF THE BOARD.

| | |
|------------|---|
| SEC. | |
| 79-4-8.24. | Quorum and voting. |
| 79-4-8.26. | Submission of matters for shareholder vote [Effective January 1, 2013]. |

§ 79-4-8.24. Quorum and voting.

[Effective until January 1, 2013, this section will read:]

(a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

(1) A majority of the fixed number of directors if the corporation has a fixed board size; or

(2) A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third ($\frac{1}{3}$) of the fixed or prescribed number of directors determined under subsection (a).

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) he objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; (2) his dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

[Effective from and after January 1, 2013, this section will read:]

(a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

(1) A majority of the fixed number of directors if the corporation has a fixed board size; or

(2) A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third ($\frac{1}{3}$) of the fixed or prescribed number of directors determined under subsection (a).

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) the director objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; (2) the dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

SOURCES: Laws, 1987, ch. 486, § 8.24; Laws, 1996, ch. 459, § 2; Laws, 2012, ch. 481, § 19, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “the director” for “he” in (d)(1) and (3); and made minor stylistic changes.

§ 79-4-8.26. Submission of matters for shareholder vote [Effective January 1, 2013].

A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

SOURCES: Laws, 2012, ch. 481, § 20, eff from and after Jan. 1, 2013.

SUBARTICLE C.

STANDARDS OF CONDUCT.

SEC.

79-4-8.31. Standards of liability for directors.

§ 79-4-8.31. Standards of liability for directors.

[Effective until January 1, 2013, this section will read:]

(a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(1) Any provision in the articles of incorporation authorized by Section 79-4-2.02(b)(4) or the protection afforded by Section 79-4-8.61 for action taken in compliance with Section 79-4-8.62 or 79-4-8.63, if interposed as a bar to the proceeding by the director, does not preclude liability; and

(2) The challenged conduct consisted or was the result of:

(i) Action not in good faith; or

(ii) A decision

(A) Which the director did not reasonably believe to be in the best interests of the corporation, or

(B) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(iii) A lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct

(A) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation, and

(B) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

(iv) A sustained failure of the director to be informed about the business and affairs of the corporation, or other material failure of the director to discharge the oversight function; or

(v) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages, shall also have the burden of establishing that:

(i) Harm to the corporation or its shareholders has been suffered, and

(ii) The harm suffered was proximately caused by the director's challenged conduct; or

(2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this section shall (1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under Section 79-4-8.61(b)(3), alter the burden of proving the fact or lack of fairness otherwise applicable, (2) alter the fact or lack of liability of a director under another section of this act, such as the provisions governing

the consequences of an unlawful distribution under Section 79-4-8.33 or a transactional interest under Section 79-4-8.61, or (3) affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

[Effective from and after January 1, 2013, this section will read:]

(a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(1) No defense by the director based on (i) any provision in the articles of incorporation authorized by Section 79-4-2.02(b)(4) or the protection afforded by Section 79-4-8.61 for action taken in compliance with Section 79-4-8.62 or 79-4-8.63, or (ii) the protection afforded by Section 79-4-8.70, precludes liability; and

(2) The challenged conduct consisted or was the result of:

(i) Action not in good faith; or

(ii) A decision:

(A) Which the director did not reasonably believe to be in the best interests of the corporation; or

(B) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(iii) A lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:

(A) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(B) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

(iv) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making (or causing to be made) appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or

(v) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages, shall also have the burden of establishing that:

(i) Harm to the corporation or its shareholders has been suffered; and

(ii) The harm suffered was proximately caused by the director's challenged conduct; or

(2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this section shall (1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under Section 79-4-8.61(b)(3), alter the burden of proving the fact or lack of fairness otherwise applicable, (2) alter the fact or lack of liability of a director under another section of this act, such as the provisions governing the consequences of an unlawful distribution under Section 79-4-8.33 or a transactional interest under Section 79-4-8.61, or (3) affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

SOURCES: Laws, 1999, ch. 471, § 2; Laws, 2012, ch. 481, § 21, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, in (a)(1), added “No defense by the director based on (i)” to the beginning and substituted “or (ii) the protection afforded by Section 79-4-8.70, precludes” for “if interposed as a bar to the proceeding by the director, does not preclude” at the end; and rewrote (a)(2)(iv).

SUBARTICLE E.

INDEMNIFICATION.

SEC.

- | | |
|------------|----------------------------|
| 79-4-8.50. | Subarticle definitions. |
| 79-4-8.53. | Advance for expenses. |
| 79-4-8.58. | Application of subarticle. |

§ 79-4-8.50. Subarticle definitions.

[Effective until January 1, 2013, this section will read:]

In this subarticle:

(1) “Corporation” includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) “Director” or “officer” means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation’s request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation’s request if the individual’s duties to the corporation also impose duties on, or otherwise involve services by, the individual to the

plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Expenses" includes counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an officer, as contemplated in Section 79-4-8.56, the office in a corporation held by the officer. "Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan or other entity.

(6) "Party" means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative and whether formal or informal.

[Effective from and after January 1, 2013, this section will read:]

In this subarticle:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee or agent of another entity or employee benefit plan. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an officer, as contemplated in Section 79-4-8.56, the office in a corporation held by the officer. "Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan or other entity.

(6) "Party" means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

(7) “Proceeding” means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratative or investigative and whether formal or informal.

SOURCES: Laws, 1987, ch. 486, § 8.50; Laws, 1996, ch. 459, § 3; Laws, 2006, ch. 429, § 5; Laws, 2012, ch. 481, § 22, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote the first sentence in (2); and rewrote (3).

§ 79-4-8.51. Authority to indemnify.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (a)(2) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by inserting the word “for” following “He engaged in conduct...” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-4-8.53. Advance for expenses.

[Effective until January 1, 2013, this section will read:]

(a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation:

(1) A written affirmation of the director’s good faith belief that the relevant standard of conduct described in Section 79-4-8.51 has been met by the director or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by Section 79-4-2.02(b)(4); and

(2) A written undertaking of the director to repay any funds advanced if the director is not entitled to mandatory indemnification under Section 79-4-8.52 and it is ultimately determined under Section 79-4-8.54 or Section 79-4-8.55 that the director has not met the relevant standard of conduct described in Section 79-4-8.51.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(1) By the board of directors:

(i) If there are two (2) or more qualified directors, by a majority vote of all the qualified directors (a majority of whom shall for such purpose constitute a quorum) or by a majority of the members of a committee of two (2) or more qualified directors appointed by such a vote; or

(ii) If there are fewer than two (2) qualified directors, by the vote necessary for action by the board in accordance with Section 79-4-8.24(c),

in which authorization directors who are not qualified directors may participate; or

(2) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

[Effective from and after January 1, 2013, this section will read:]

(a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation:

(1) A signed written affirmation of the director's good faith belief that the relevant standard of conduct described in Section 79-4-8.51 has been met by the director or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by Section 79-4-2.02(b)(4); and

(2) A signed written undertaking of the director to repay any funds advanced if the director is not entitled to mandatory indemnification under Section 79-4-8.52 and it is ultimately determined under Section 79-4-8.54 or Section 79-4-8.55 that the director has not met the relevant standard of conduct described in Section 79-4-8.51.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(1) By the board of directors:

(i) If there are two (2) or more qualified directors, by a majority vote of all the qualified directors (a majority of whom shall for such purpose constitute a quorum) or by a majority of the members of a committee of two (2) or more qualified directors appointed by such a vote; or

(ii) If there are fewer than two (2) qualified directors, by the vote necessary for action by the board in accordance with Section 79-4-8.24(c), in which authorization directors who are not qualified directors may participate; or

(2) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

SOURCES: Laws, 1987, ch. 486, § 8.53; Laws, 1996, ch. 459, § 6; Laws, 2006, ch. 429, § 6; Laws, 2012, ch. 481, § 23, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, added “signed” preceding “written” at the beginning of (a)(1) and (2).

§ 79-4-8.58. Application of subarticle.

[Effective until January 1, 2013, this section will read:]

(a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with Section 79-4-8.51 or advance funds to pay for or reimburse expenses in accordance with Section 79-4-8.53. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with Section 79-4-8.53 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) Any provision pursuant to subsection (a) shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by Section 79-4-11.06(a)(3).

(c) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this subarticle.

(d) This subarticle does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

(e) This subarticle does not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

[Effective from and after January 1, 2013, this section will read:]

(a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with Section 79-4-8.51 or advance funds to pay for or reimburse expenses in accordance with Section 79-4-8.53. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with Section 79-4-8.53 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) A right of indemnification or to advances for expenses created by this subarticle or under subsection (a) that is in effect at the time of an act or omission shall not be eliminated or impaired with respect to the act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the directors or shareholders adopted after the occurrence of the act or omission, unless, in the case of a right created under subsection (a), the provision creating the right that is in effect at the time of the act or omission

explicitly authorizes elimination or impairment after the act or omission has occurred.

(c) Any provision pursuant to subsection (a) shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by Section 79-4-11.06(a)(3).

(d) Subject to subsection (b), a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this subarticle.

(e) This subarticle does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

(f) This subarticle does not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

SOURCES: Laws, 1987, ch. 486, § 8.58; Laws, 1996, ch. 459, § 11; Laws, 2012, ch. 481, § 24, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, added (b); and added "Subject to subsection (b)" to the beginning of (d).

SUBARTICLE F.

DIRECTOR'S CONFLICTS OF INTEREST.

SEC.

79-4-8.60. Definitions.

§ 79-4-8.60. Definitions.

[Effective until January 1, 2013, this section will read:]

In Sections 79-4-8.60 through 79-4-8.63 and Section 79-4-8.70:

(1) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation (or by an entity controlled by the corporation):

- (i) To which, at the relevant time, the director is a party; or
- (ii) Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or
- (iii) Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(2) "Control" (including the term "controlled by") means (i) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through

the ownership of voting shares or interests, by contract, or otherwise, or (ii) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(3) "Relevant time" means (i) the time at which directors' actions respecting the transaction are taken in compliance with Section 79-4-8.62, or (ii) if the transaction is not brought before the board of directors of the corporation (or its committee) for action under Section 79-4-8.62, at the time the corporation (or an entity controlled by the corporation) becomes legally obligated to consummate the transaction.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) "Related person" means:

- (i) The director's spouse;
- (ii) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, (or spouse of any thereof) of the director or of the director's spouse;
- (iii) An individual living in the same home as the director;
- (iv) An entity (other than the corporation or an entity controlled by the corporation) controlled by the director or any person specified in this paragraph (5);
- (v) A domestic or foreign (A) business or nonprofit corporation (other than the corporation or an entity controlled by the corporation) of which the director is a director, (B) unincorporated entity of which the director is a general partner or a member of the governing body, or (C) individual, trust or estate for whom or of which the director is a trustee, guardian, personal representative or like fiduciary; or
- (vi) A person that is, or an entity that is controlled by, an employer of the director.

(6) "Fair to the corporation" means, for purposes of Section 79-4-8.61(b)(3), that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was (i) fair in terms of the director's dealings with the corporation, and (ii) comparable to what might have been obtainable in an arms' length transaction, given the consideration paid or received by the corporation.

(7) "Required disclosure" means disclosure of (i) the existence and nature of the director's conflicting interest, and (ii) all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

[Effective from and after January 1, 2013, this section will read:]

In Sections 79-4-8.60 through 79-4-8.63 and Section 79-4-8.70:

(1) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation (or by an entity controlled by the corporation):

- (i) To which, at the relevant time, the director is a party; or
- (ii) Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or
- (iii) Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(2) “Control” (including the term “controlled by”) means (i) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise, or (ii) being subject to a majority of the risk of loss from the entity’s activities or entitled to receive a majority of the entity’s residual returns.

(3) “Relevant time” means (i) the time at which directors’ actions respecting the transaction are taken in compliance with Section 79-4-8.62, or (ii) if the transaction is not brought before the board of directors of the corporation (or its committee) for action under Section 79-4-8.62, at the time the corporation (or an entity controlled by the corporation) becomes legally obligated to consummate the transaction.

(4) “Material financial interest” means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director’s judgment when participating in action on the authorization of the transaction.

(5) “Related person” means:

- (i) The director’s spouse;
- (ii) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsiblings, half-siblings, aunt, uncle, niece or nephew (or spouse of any thereof) of the director or of the director’s spouse;
- (iii) An individual living in the same home as the director;
- (iv) An entity (other than the corporation or an entity controlled by the corporation) controlled by the director or any person specified in this paragraph (5);
- (v) A domestic or foreign (A) business or nonprofit corporation (other than the corporation or an entity controlled by the corporation) of which the director is a director, (B) unincorporated entity of which the director is a general partner or a member of the governing body, or (C) individual, trust or estate for whom or of which the director is a trustee, guardian, personal representative or like fiduciary; or

(vi) A person that is, or an entity that is controlled by, an employer of the director.

(6) “Fair to the corporation” means, for purposes of Section 79-4-8.61(b) (3), that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was (i) fair in terms of the director’s dealings with the corporation, and (ii) comparable to what might have been obtainable in an arms’ length transaction, given the consideration paid or received by the corporation.

(7) “Required disclosure” means disclosure of (i) the existence and nature of the director’s conflicting interest, and (ii) all facts known to the

director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

SOURCES: Laws, 1990, ch. 538, § 1; Laws, 2006, ch. 429, § 8; Laws, 2012, ch. 481, § 25, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — In 2009, a typographical error in paragraph (3) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “(i) the time at which directors’ actions respecting the transaction are taken...” for “(i) the time at which directors’ actions respecting the transaction is taken...” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

Amendment Notes — The 2012 amendment, effective January 1, 2013, inserted “stepsiblings, half-siblings, aunt, uncle, niece or nephew” following “sibling” in (5)(ii).

ARTICLE 10.

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS.

Subarticle A. Amendment of Articles of Incorporation.....79-4-10.01

SUBARTICLE A.

AMENDMENT OF ARTICLES OF INCORPORATION.

SEC.

79-4-10.05. Amendment by board of directors.

§ 79-4-10.05. Amendment by board of directors.

[Effective until January 1, 2013, this section will read:]

Unless the articles of incorporation provide otherwise, a corporation’s board of directors may adopt amendments to the corporation’s articles of incorporation without shareholder approval:

- (1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
- (2) To delete the names and addresses of the initial directors;
- (3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;
- (4) If the corporation has only one (1) class of shares outstanding:
 - (a) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or
 - (b) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;
- (5) To change the corporate name by substituting the word “corporation,” “incorporated,” “company,” “limited” or the abbreviation “corp.,” “inc.,”

“co.” or “ltd.” for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution for the name;

(6) To reflect a reduction in authorized shares, as a result of the operation of Section 79-4-6.31(b), when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) To delete a class of shares from the articles of incorporation, as a result of the operation of Section 79-4-6.31(b), when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) To make any change expressly permitted by Section 79-4-6.02(a) or (b) to be made without shareholder approval.

[Effective from and after January 1, 2013, this section will read:]

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To change the information required by Section 79-35-5(a);

(4) If the corporation has only one (1) class of shares outstanding:

(a) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(b) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) To change the corporate name by substituting the word “corporation,” “incorporated,” “company,” “limited” or the abbreviation “corp.,” “inc.,” “co.” or “ltd.” for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution for the name;

(6) To reflect a reduction in authorized shares, as a result of the operation of Section 79-4-6.31(b), when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) To delete a class of shares from the articles of incorporation, as a result of the operation of Section 79-4-6.31(b), when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) To make any change expressly permitted by Section 79-4-6.02(a) or (b) to be made without shareholder approval.

SOURCES: Former 1972 Code § 79-4-10.05 [Laws, 1987, ch. 486, § 10.05] renumbered as § 79-4-10.02 by Laws, 2000, ch. 469, § 4. Former 1972 Code § 79-4-10.02 [Laws, 1987, ch. 486, § 10.02; Laws, 1988, ch. 368, § 11]

amended and renumbered as § 79-4-10.05 by Laws, 2000, ch. 469, § 7; Laws, 2004, ch. 495, § 7; Laws, 2012, ch. 382, § 31, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote (3).

ARTICLE 11.

MERGER AND SHARE EXCHANGE.

SEC.

- 79-4-11.01. Definitions.
- 79-4-11.02. Merger.
- 79-4-11.03. Share exchange.
- 79-4-11.04. Action on a plan of merger or share exchange.
- 79-4-11.06. Articles of merger or share exchange.
- 79-4-11.07. Effect of merger or share exchange.
- 79-4-11.08. Abandonment of merger or share exchange.

§ 79-4-11.01. Definitions.

[Effective until January 1, 2013, this section will read:]

As used in this chapter:

- (a) “Interests” means the proprietary interests in an other entity.
- (b) “Merger” means a business combination pursuant to Section 79-4-11.02.
- (c) “Organizational documents” means the basic document or documents that create, or determine the internal governance of, an other entity.
- (d) “Other entity” means any association or legal entity, other than a domestic or foreign corporation, organized to conduct business, including, without limitation, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, and business trusts.
- (e) “Party to a merger” or “party to a share exchange” means any domestic or foreign corporation or other entity that will either:
 - (1) Merge under a plan of merger;
 - (2) Acquire shares or interests of another corporation or an other entity in a share exchange; or
 - (3) Have all of its shares or interests or all of one or more classes or series of its shares or interests acquired in a share exchange.
- (f) “Share exchange” means a business combination pursuant to Section 79-4-11.03.
- (g) “Survivor” in a merger means the corporation or other entity into which one or more other corporations or other entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

[Effective from and after January 1, 2013, this section will read:]

As used in this chapter:

- (a) “Merger” means a business combination pursuant to Section 79-4-11.02.

(b) “Organizational documents” means the basic document or documents that create, or determine the internal governance of, an eligible entity.

(c) “Party to a merger” or “party to a share exchange” means any domestic or foreign corporation or eligible entity that will:

- (1) Merge under a plan of merger;
- (2) Acquire shares or eligible interests of another corporation or eligible entity in a share exchange; or
- (3) Have all of its shares or eligible interests or all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

(d) “Share exchange” means a business combination pursuant to Section 79-4-11.03.

(e) “Survivor” in a merger means the corporation or eligible entity into which one or more other corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

SOURCES: Laws, 2000, ch. 469, § 15; Laws, 2012, ch. 481, § 26, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, deleted former definitions (a) and (d), “Interests” and “Other entity”; substituted “eligible” for “other” preceding “entity” throughout the section; and made a minor stylistic change.

§ 79-4-11.02. Merger.

[Effective until January 1, 2013, this section will read:]

(a) One or more domestic corporations may merge with a domestic or foreign corporation or other entity pursuant to a plan of merger.

(b) A foreign corporation, or a domestic or foreign other entity, may be a party to the merger, or may be created by the terms of the plan of merger, only if:

(1) The merger is permitted by the laws under which the corporation or other entity is organized or by which it is governed; and

(2) In effecting the merger, the corporation or other entity complies with such laws and with its articles of incorporation or organizational documents.

(c) The plan of merger must include:

(1) The name of each corporation or other entity that will merge and the name of the corporation or other entity that will be the survivor of the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each merging corporation and interest of each merging other entity into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(4) The articles of incorporation of any corporation, or the organizational documents of any other entity to be created by the merger, or if a new

corporation or other entity is not to be created by the merger, any amendments to the survivor's articles of incorporation, or organizational documents; and

(5) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organizational documents of any such party.

(d) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 79-4-1.20(k).

(e) The plan of merger may also include a provision that the plan may be amended prior to filing the articles of merger with the Secretary of State, provided that if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to:

(1) Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders of or owners of interests in any party to the merger upon conversion of their shares or interests under the plan;

(2) Change the articles of incorporation of any corporation or the organizational documents of any other entity, that will survive or be created as a result of the merger, except for changes permitted by Section 79-4-10.05 or by comparable provisions of the laws under which the foreign corporation or other entity is organized or governed; or

(3) Change any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) Liability from a merger shall be limited as provided in Sections 79-33-1 through 79-33-9.

[Effective from and after January 1, 2013, this section will read:]

(a) One or more domestic corporations may merge with a domestic or foreign corporation or eligible entity pursuant to a plan of merger.

(b) A foreign corporation, or a domestic or foreign eligible entity, may be a party to the merger, or may be created by the terms of the plan of merger, only if:

(1) The merger is permitted by the laws under which the corporation or eligible entity is organized or by which it is governed; and

(2) In effecting the merger, the corporation or eligible entity complies with such laws and with its articles of incorporation or organizational documents.

(c) The plan of merger must include:

(1) The name of each corporation or eligible entity that will merge and the name of the corporation or eligible entity that will be the survivor of the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each merging corporation and eligible interest of each merging eligible entity into shares

or other securities, eligible interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(4) The articles of incorporation of any corporation, or the organizational documents of any eligible entity to be created by the merger, or if a new corporation or eligible entity is not to be created by the merger, any amendments to the survivor's articles of incorporation, or organizational documents; and

(5) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organizational documents of any such party.

(d) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 79-4-1.20(k).

(e) The plan of merger may also include a provision that the plan may be amended prior to filing the articles of merger with the Secretary of State, provided that if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to:

(1) Change the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders of or owners of interests in any party to the merger upon conversion of their shares or interests under the plan;

(2) Change the articles of incorporation of any corporation or the organizational documents of any eligible entity, that will survive or be created as a result of the merger, except for changes permitted by Section 79-4-10.05 or by comparable provisions of the laws under which the foreign corporation or eligible entity is organized or governed; or

(3) Change any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) Liability from a merger shall be limited as provided in Sections 79-33-1 through 79-33-9.

SOURCES: Former 1972 Code § 79-4-11.02 [Laws, 1987, ch. 486, § 11.02] renumbered as § 79-4-11.03 by Laws, 2000, ch. 469, § 17. Former 1972 Code § 79-4-11.01 [Laws, 1987, ch. 486, § 11.01] amended and renumbered as § 79-4-11.02 by Laws, 2000, ch. 469, § 16; Laws, 2004, ch. 353, § 7; Laws, 2004, ch. 495, § 9; Laws, 2012, ch. 481, § 27, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “eligible” for “other” preceding “entity/or interests” throughout the section.

§ 79-4-11.03. Share exchange.

[Effective until January 1, 2013, this section will read:]

(a) Through a share exchange:

(1) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all

of the interests of one or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

(2) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

(b) A foreign corporation, or a domestic or foreign other entity, may be a party to the share exchange only if:

(1) The share exchange is permitted by the laws under which the corporation or other entity is organized or by which it is governed; and

(2) In effecting the share exchange, the corporation or other entity complies with such laws and with its articles of incorporation or organizational documents.

(c) The plan of share exchange must include:

(1) The name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests;

(2) The terms and conditions of the share exchange;

(3) The manner and basis of exchanging shares of a corporation or interests in an other entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing; and

(4) Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organizational documents of any such party.

(d) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 79-4-1.20(k).

(e) The plan of share exchange may also include a provision that the plan may be amended prior to filing of the articles of share exchange with the Secretary of State, provided that if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to:

(1) Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be issued by the corporation or to be received by the shareholders or of owners of interests in any party to the share exchange in exchange for their shares or interests under the plan; or

(2) Change any of the terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) Section 79-4-11.03 does not limit the power of a domestic corporation to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

[Effective from and after January 1, 2013, this section will read:]

(a) Through a share exchange:

(1) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign eligible entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

(2) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or eligible entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

(b) A foreign corporation, or a domestic or foreign eligible entity, may be a party to the share exchange only if:

(1) The share exchange is permitted by the laws under which the corporation or eligible entity is organized or by which it is governed; and

(2) In effecting the share exchange, the corporation or eligible entity complies with such laws and with its articles of incorporation or organizational documents.

(c) The plan of share exchange must include:

(1) The name of each corporation or eligible entity whose shares or interests will be acquired and the name of the corporation or eligible entity that will acquire those shares or interests;

(2) The terms and conditions of the share exchange;

(3) The manner and basis of exchanging shares of a corporation or interests in an eligible entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing; and

(4) Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organizational documents of any such party.

(d) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 79-4-1.20(k).

(e) The plan of share exchange may also include a provision that the plan may be amended prior to filing of the articles of share exchange with the Secretary of State, provided that if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to:

(1) Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be issued by the corporation or to be received by the shareholders of or owners of interests in any party to the share exchange in exchange for their shares or interests under the plan; or

(2) Change any of the terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) Section 79-4-11.03 does not limit the power of a domestic corporation to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

SOURCES: Former 1972 Code § 79-4-11.03 [Laws, 1987, ch. 486, § 11.03] renumbered as § 79-4-11.04 by Laws, 2000, ch. 469, § 18. Former 1972 Code § 79-4-11.02 [Laws, 1987, ch. 486, § 11.02] amended and renumbered as § 79-4-11.03 by Laws, 2000, ch. 469, § 17; Laws, 2004, ch. 495, § 10; Laws, 2012, ch. 481, § 28, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “eligible” for “other” preceding “entity” throughout the section.

§ 79-4-11.04. Action on a plan of merger or share exchange.

[Effective until January 1, 2013, this section will read:]

In the case of a domestic corporation that is a party to a merger or share exchange:

(a) The plan of merger or share exchange must be adopted by the board of directors.

(b) Except as provided in subsection (g) and in Section 79-4-11.05, after adopting the plan of merger, the board of directors must submit the plan to the shareholders for their approval. After adopting the plan of share exchange, the board of directors of the corporation whose shares will be acquired in the share exchange must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan of merger or share exchange, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

(d) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be

accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or other entity.

(e) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater number of votes to be present, the approval of the plan of merger or share exchange shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

(f) Separate voting by voting groups is required:

(1) On a plan of merger, by each class or series of shares that (A) are to be converted, pursuant to the provisions of the plan of merger, into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, or (B) would have a right to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under Section 79-4-10.04;

(2) On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(3) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(g) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger is not required if:

(1) The corporation will survive the merger; and

(2) Except for amendments permitted by Section 79-4-10.05, its articles of incorporation will not be changed; and

(3) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change; and

(4) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(5) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger.

(h) As used in subsection (g):

(1) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(2) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(i) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to personal liability for the obligations or liabilities of any other person or entity, approval of the plan of merger shall require the execution, by each such shareholder, of a separate written consent to become subject to such personal liability.

[Effective from and after January 1, 2013, this section will read:]

In the case of a domestic corporation that is a party to a merger or share exchange:

(a) The plan of merger or share exchange must be adopted by the board of directors.

(b) Except as provided in subsection (g) and in Section 79-4-11.05, after adopting the plan of merger, the board of directors must submit the plan to the shareholders for their approval. After adopting the plan of share exchange, the board of directors of the corporation whose shares will be acquired in the share exchange must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan of merger or share exchange, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

(d) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or eligible entity. If the

corporation is to be merged into a corporation or eligible entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or eligible entity.

(e) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater number of votes to be present, the approval of the plan of merger or share exchange shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

(f) Separate voting by voting groups is required:

(1) On a plan of merger, by each class or series of shares that (A) are to be converted, pursuant to the provisions of the plan of merger, into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, or (B) would have a right to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under Section 79-4-10.04;

(2) On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(3) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(g) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger is not required if:

(1) The corporation will survive the merger; and

(2) Except for amendments permitted by Section 79-4-10.05, its articles of incorporation will not be changed; and

(3) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change; and

(4) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(5) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a

result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger.

(h) As used in subsection (g):

(1) “Participating shares” means shares that entitle their holders to participate without limitation in distributions.

(2) “Voting shares” means shares that entitle their holders to vote unconditionally in elections of directors.

(i) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to personal liability for the obligations or liabilities of any other person or entity, approval of the plan of merger shall require the execution, by each such shareholder, of a separate written consent to become subject to such personal liability.

SOURCES: Former 1972 Code § 79-4-11.04 [Laws, 1987, ch. 486, § 11.04] renumbered as § 79-4-11.05 by Laws, 2000, ch. 469, § 19. Former 1972 Code § 79-4-11.03 [Laws, 1987, ch. 486, § 11.03] amended and renumbered as § 79-4-11.04 by Laws, 2000, ch. 469, § 18; Laws, 2012, ch. 481, § 29, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “eligible” for “other” preceding “entity” throughout (d).

§ 79-4-11.06. Articles of merger or share exchange.

[Effective until January 1, 2013, this section will read:]

(a) After a plan of merger or share exchange has been adopted and approved as required by the Mississippi Business Corporation Act, articles of merger or share exchange shall be executed on behalf of each party to the merger or share exchange by any officer or other duly authorized representative. The articles shall set forth:

(1) The names of the parties to the merger or share exchange and the date on which the merger or share exchange occurred or is to be effective;

(2) If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor’s articles of incorporation or the articles of incorporation of the new corporation;

(3) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by the Mississippi Business Corporation Act and the articles of incorporation;

(4) If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and

(5) As to each foreign corporation and each other entity that was a party to the merger or share exchange, a statement that the plan and the performance of its terms were duly authorized by all action required by the laws under which the corporation or other entity is organized or by which it is governed, and by its articles of incorporation or organizational documents.

(b) Articles of merger or share exchange shall be delivered to the Secretary of State for filing by the survivor of the merger or the acquiring corporation in a share exchange and shall take effect on the effective date.

[Effective from and after January 1, 2013, this section will read:]

(a) After a plan of merger or share exchange has been adopted and approved as required by the Mississippi Business Corporation Act, articles of merger or share exchange shall be signed on behalf of each party to the merger or share exchange by any officer or other duly authorized representative. The articles shall set forth:

(1) The names of the parties to the merger or share exchange and the date on which the merger or share exchange occurred or is to be effective;

(2) If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

(3) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by the Mississippi Business Corporation Act and the articles of incorporation;

(4) If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and

(5) As to each foreign corporation and each eligible entity that was a party to the merger or share exchange, a statement that the plan and the performance of its terms were duly authorized by all action required by the laws under which the corporation or eligible entity is organized or by which it is governed, and by its articles of incorporation or organizational documents.

(b) Articles of merger or share exchange shall be delivered to the Secretary of State for filing by the survivor of the merger or the acquiring corporation in a share exchange and shall take effect on the effective date.

SOURCES: Former 1972 Code § 79-4-11.06 [Laws, 1987, ch. 486, § 11.06] renumbered as § 79-4-11.07 by Laws, 2000, ch. 469, § 21. Former 1972 Code § 79-4-11.05 [Laws, 1987, ch. 486, § 11.05] amended and renumbered as § 79-4-11.06 by Laws, 2000, ch. 469, § 20; Laws, 2012, ch. 481, § 30, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “signed” for “executed” preceding “on behalf” in (a); and substituted “eligible” for “other” twice in (a)(5).

Cross References — Effect of merger or consolidation of domestic stock insurance company with another domestic or foreign stock insurance company is as provided in this section, see § 83-19-119.

§ 79-4-11.07. Effect of merger or share exchange.

[Effective until January 1, 2013, this section will read:]

(a) When a merger becomes effective:

(1) The corporation or other entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(2) The separate existence of every corporation or other entity that is merged into the survivor ceases;

(3) All property owned by, and every contract right possessed by, each corporation or other entity that merges into the survivor is vested in the survivor without reversion or impairment;

(4) All liabilities of each corporation or other entity that is merged into the survivor are vested in the survivor subject to the limitations as provided in Sections 79-33-1 through 79-33-9.

(5) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(6) The articles of incorporation or organizational documents of the survivor are amended to the extent provided in the plan of merger;

(7) The articles of incorporation or organizational documents of a survivor that is created by the merger become effective; and

(8) The shares of each corporation that is a party to the merger, and the interests in an other entity that is a party to a merger, that are to be converted under the plan of merger into shares, interests, obligations, rights to acquire securities, other securities, cash, other property, or any combination of the foregoing, are converted and the former holders of such shares or interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Title 79, Chapter 4, Article 13.

(b) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or securities, other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under Title 79, Chapter 4, Article 13.

(c) Any shareholder of a domestic corporation that is a party to a merger or share exchange who, prior to the merger or share exchange, was liable for the liabilities or obligations of such corporation, shall not be released from such liabilities or obligations by reason of the merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation, or a foreign other entity, that is the survivor of the merger is deemed to:

(1) Appoint the Secretary of State as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and

(2) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under Title 79, Chapter 4, Article 13.

[Effective from and after January 1, 2013, this section will read:]

(a) When a merger becomes effective:

(1) The corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(2) The separate existence of every corporation or eligible entity that is merged into the survivor ceases;

(3) All property owned by, and every contract right possessed by, each corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;

(4) All liabilities of each corporation or eligible entity that is merged into the survivor are vested in the survivor subject to the limitations as provided in Sections 79-33-1 through 79-33-9;

(5) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(6) The articles of incorporation or organizational documents of the survivor are amended to the extent provided in the plan of merger;

(7) The articles of incorporation or organizational documents of a survivor that is created by the merger become effective; and

(8) The shares of each corporation that is a party to the merger, and the interests in an eligible entity that is a party to a merger, that are to be converted under the plan of merger into shares, interests, obligations, rights to acquire securities, other securities, cash, other property, or any combination of the foregoing, are converted and the former holders of such shares or interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Title 79, Chapter 4, Article 13.

(b) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or securities, other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under Title 79, Chapter 4, Article 13.

(c) Any shareholder of a domestic corporation that is a party to a merger or share exchange who, prior to the merger or share exchange, was liable for the liabilities or obligations of such corporation, shall not be released from such liabilities or obligations by reason of the merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity, that is the survivor of the merger is deemed to:

(1) Agree that service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who

exercise appraisal rights, may be made in the manner provided in Section 79-35-13; and

(2) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under Title 79, Chapter 4, Article 13.

SOURCES: Former 1972 Code § 79-4-11.07 [Laws, 1987, ch. 486, § 11.07] deleted by Laws, 2000, ch. 469, § 21. Former 1972 Code § 79-4-11.06 [Laws, 1987, ch. 486, § 11.06] amended and renumbered as § 79-4-11.07 by Laws, 2000, ch. 469, § 21; Laws, 2004, ch. 353, § 8; Laws, 2012, ch. 382, § 32; Laws, 2012, ch. 481, § 31, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Section 31 of Chapter 481, Laws of 2012, effective January 1, 2013 (approved April 24, 2012), amended this section. Section 32 of Chapter 382, Laws of 2012, effective January 1, 2013 (approved April 17, 2012), also amended this section. As set out above, this section reflects the language of Section 31 of Chapter 481, Laws of 2012, which contains language that specifically provides that it supersedes § 79-4-11.07 as amended by Laws of 2012, ch. 382.

Amendment Notes — The first 2012 amendment (ch. 382), effective January 1, 2013, rewrote (d)(1); and made minor stylistic changes.

The second 2012 amendment (ch. 481), effective January 1, 2013, rewrote (d)(1); and substituted “eligible” for “other” preceding “entity” throughout the section.

§ 79-4-11.08. Abandonment of merger or share exchange.

[Effective until January 1, 2013, this section will read:]

(a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation or a domestic or foreign other entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this article, and at any time before the merger or share exchange has become effective, it may be abandoned by any party thereto without action by the party’s shareholders or owners of interests, in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors of a corporation, or the managers of an other entity, subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) after articles of merger or share exchange have been filed with the Secretary of State but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

[Effective from and after January 1, 2013, this section will read:]

(a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation or a domestic or foreign eligible

entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this article, and at any time before the merger or share exchange has become effective, it may be abandoned by any party thereto without action by the party's shareholders or owners of interests, in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) after articles of merger or share exchange have been filed with the Secretary of State but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, signed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

SOURCES: Laws, 2000, ch. 469, § 22; Laws, 2012, ch. 481, § 32, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, in (a), substituted “eligible” for “other” preceding “entity”, and deleted “of a corporation, or the managers of an other entity” following “board of directors” near the end; and substituted signed” for “executed” preceding “on behalf” in (b).

ARTICLE 13.

APPRAISAL RIGHTS.

| | | |
|---------------|---|------------|
| Subarticle B. | Procedure for Exercise of Appraisal Rights..... | 79-4-13.20 |
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SUBARTICLE B.

PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS.

| | |
|-------------|--|
| SEC. | |
| 79-4-13.20. | Notice of appraisal rights. |
| 79-4-13.21. | Notice of intent to demand payment and consequences of voting or consenting. |
| 79-4-13.22. | Appraisal notice and form. |

§ 79-4-13.20. Notice of appraisal rights.

[Effective until January 1, 2013, this section will read:]

(a) Where any corporate action specified in Section 79-4-13.02(a) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state

that the corporation has concluded that the shareholders are, are not or may be entitled to assert appraisal rights under this article. If the corporation concludes that appraisal rights are or may be available, a copy of this article must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to Section 79-4-11.05, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within ten (10) days after the corporate action became effective and include the materials described in Section 79-4-13.22.

(c) Where any corporate action specified in Section 79-4-13.02(a) is to be approved by written consent of the shareholders pursuant to Section 79-4-7.04:

(1) Written notice that appraisal rights are, are not or may be available must be given to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article; and

(2) Written notice that appraisal rights are, are not or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by Section 79-4-7.04(e) and (f), may include the materials described in Section 79-4-13.22 and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article.

[Effective from and after January 1, 2013, this section will read:]

(a) Where any corporate action specified in Section 79-4-13.02(a) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that the shareholders are, are not or may be entitled to assert appraisal rights under this article. If the corporation concludes that appraisal rights are or may be available, a copy of this article must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to Section 79-4-11.05, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within ten (10) days after the corporate action became effective and include the materials described in Section 79-4-13.22.

(c) Where any corporate action specified in Section 79-4-13.02(a) is to be approved by written consent of the shareholders pursuant to Section 79-4-7.04:

(1) Written notice that appraisal rights are, are not or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article; and

(2) Written notice that appraisal rights are, are not or may be available must be delivered together with the notice to nonconsenting and nonvoting

shareholders required by Section 79-4-7.04(e) and (f), may include the materials described in Section 79-4-13.22 and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article.

SOURCES: Laws, 1987, ch. 486, § 13.20; Laws, 2000, ch. 469, § 31; Laws, 2007, ch. 361, § 10; Laws, 2012, ch. 481, § 33, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “sent” for “given” preceding “to each record shareholder from whom a consent is solicited” in (c)(1).

§ 79-4-13.21. Notice of intent to demand payment and consequences of voting or consenting.

[Effective until January 1, 2013, this section will read:]

(a) If a corporate action specified in Section 79-4-13.02(a) is submitted to a vote at a shareholders’ meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(1) Must deliver to the corporation, before the vote is taken, written notice of the shareholder’s intent to demand payment if the proposed action is effectuated; and

(2) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(b) If a corporate action specified in Section 79-4-13.02(a) is to be approved by less than unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must not execute a consent in favor of the proposed action with respect to that class or series of shares.

(c) A shareholder who fails to satisfy the requirements of subsection (a) or (b) is not entitled to payment under this article.

[Effective from and after January 1, 2013, this section will read:]

(a) If a corporate action specified in Section 79-4-13.02(a) is submitted to a vote at a shareholders’ meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(1) Must deliver to the corporation, before the vote is taken, written notice of the shareholder’s intent to demand payment if the proposed action is effectuated; and

(2) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(b) If a corporate action specified in Section 79-4-13.02(a) is to be approved by less than unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must not sign a consent in favor of the proposed action with respect to that class or series of shares.

(c) A shareholder who fails to satisfy the requirements of subsection (a) or (b) is not entitled to payment under this article.

SOURCES: Laws, 1987, ch. 486, § 13.21; Laws, 2000, ch. 469, § 32; Laws, 2007, ch. 361, § 11; Laws, 2012, ch. 481, § 34, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “sign” for “execute” preceding “a consent in favor of the proposed action” near the end of (b).

§ 79-4-13.22. Appraisal notice and form.

[Effective until January 1, 2013, this section will read:]

(a) If proposed corporate action requiring appraisal rights under Section 79-4-13.02(a) becomes effective, the corporation must deliver a written appraisal notice and form required by subsection (b)(1) to all shareholders who satisfied the requirements of Section 79-4-13.21(a) or Section 79-4-13.21(b). In the case of a merger under Section 79-4-11.05, the parent must deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice must be sent no earlier than the date the corporate action specified in Section 79-4-13.02(a) became effective and no later than ten (10) days after such date, and must:

(1) Supply a form that (i) specifies the date of the first announcement to shareholders of the principal terms of the proposed corporate action, if any, and (ii) if such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date and that, as to those shares, the shareholder did not vote for or consent to the transaction;

(2) State:

(i) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (2)(ii);

(ii) A date by which the corporation must receive the form, which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (a) appraisal notice and form are sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

(iii) The corporation’s estimate of the fair value of the shares;

(iv) That, if requested in writing, the corporation will provide, to the shareholder so requesting, within ten (10) days after the date specified in subsection (2) (ii) the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) The date by which the notice to withdraw under Section 79-4-13.23 must be received, which date must be within twenty (20) days after the date specified in subsection (2)(ii); and

(3) Be accompanied by a copy of this article.

[Effective from and after January 1, 2013, this section will read:]

(a) If proposed corporate action requiring appraisal rights under Section 79-4-13.02(a) becomes effective, the corporation must send a written appraisal notice and the form required by subsection (b)(1) to all shareholders who satisfied the requirements of Section 79-4-13.21(a) or Section 79-4-13.21(b). In the case of a merger under Section 79-4-11.05, the parent must deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice must be delivered no earlier than the date the corporate action specified in Section 79-4-13.02(a) became effective and no later than ten (10) days after such date, and must:

(1) Supply a form that (i) specifies the date of the first announcement to shareholders of the principal terms of the proposed corporate action, if any, and (ii) if such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date and that, as to those shares, the shareholder did not vote for or consent to the transaction;

(2) State:

(i) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (2)(ii);

(ii) A date by which the corporation must receive the form, which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (a) appraisal notice is sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

(iii) The corporation's estimate of the fair value of the shares;

(iv) That, if requested in writing, the corporation will provide, to the shareholder so requesting, within ten (10) days after the date specified in subsection (2) (ii) the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) The date by which the notice to withdraw under Section 79-4-13.23 must be received, which date must be within twenty (20) days after the date specified in subsection (2)(ii); and

(3) Be accompanied by a copy of this article.

SOURCES: Laws, 1987, ch. 486, § 13.22; Laws, 2000, ch. 469, § 33; Laws, 2007, ch. 361, § 12; Laws, 2012, ch. 481, § 35, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “send” for “deliver” preceding “a written appraisal” in the first sentence of (a); substituted “delivered” for “sent” in (b); and made minor stylistic changes throughout.

SUBARTICLE C.

JUDICIAL APPRAISAL OF SHARES.

SEC.

79-4-13.30. Court action.

§ 79-4-13.30. Court action.**[Effective until January 1, 2013, this section will read:]**

(a) If a shareholder makes demand for payment under Section 79-4-13.26 which remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to Section 79-4-13.26 plus interest.

(b) The corporation shall commence the proceeding in the appropriate court of the county where the corporation's principal office (or, if none, its registered office) in this state is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

(c) The corporation shall make all shareholders (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each shareholder made a party to the proceeding is entitled to judgment (i) for the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares or (ii) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under Section 79-4-13.25.

[Effective from and after January 1, 2013, this section will read:]

(a) If a shareholder makes demand for payment under Section 79-4-13.26 which remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to

determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to Section 79-4-13.26 plus interest.

(b) The corporation shall commence the proceeding in the appropriate court of the county where the corporation's principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state. If the corporation is a foreign corporation, it shall commence the proceeding in the county in this state where the principal office of the domestic corporation merged with the foreign corporation was located or, if the domestic corporation did not have its principal office in this state at the time of the transaction, in Chancery Court of the First Judicial District of Hinds County, Mississippi.

(c) The corporation shall make all shareholders (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each shareholder made a party to the proceeding is entitled to judgment (i) for the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares or (ii) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under Section 79-4-13.25.

SOURCES: Laws, 1987, ch. 486, § 13.30; Laws, 2000, ch. 469, § 38; Laws, 2012, ch. 382, § 33, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote (b).

ARTICLE 14.

DISSOLUTION.

| | | |
|---------------|---------------------------------|------------|
| Subarticle A. | Voluntary Dissolution..... | 79-4-14.01 |
| Subarticle B. | Administrative Dissolution..... | 79-4-14.20 |
| Subarticle C. | Judicial Dissolution..... | 79-4-14.30 |

SUBARTICLE A.

VOLUNTARY DISSOLUTION.

SEC.

- 79-4-14.07. Unknown claims against dissolved corporation.
79-4-14.08. Dissolved corporations — chancery court proceedings for security payment of claims; notice; guardian ad litem; satisfaction of claim.

§ 79-4-14.05. Effect of dissolution.**JUDICIAL DECISIONS****1. In general.**

Administratively dissolved corporation is not precluded from liquidation under chapter 11 bankruptcy, even if the corporation is not eligible for reinstatement, since Miss. Code. Ann. § 79-4-14.05(a)(5)

provides the dissolved corporation broad discretion to wind up and liquidate its business affairs. In re Superior Boat Works, Inc., 438 B.R. 878 (Bankr. N.D. Miss. 2010).

§ 79-4-14.07. Unknown claims against dissolved corporation.

[Effective until January 1, 2013, this section will read:]

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within the lesser of three (3) years after the publication date of the newspaper notice, or any other applicable limitations period established by applicable law:

(1) A claimant who was not given written notice under Section 79-4-14.06;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred by Section 79-4-14.06(c) or Section 79-4-14.07(c) may be enforced:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) Except as provided in Section 79-4-14.08(d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

[Effective from and after January 1, 2013, this section will read:]

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was located, or in Hinds County if the corporation does not have a principal office in this state;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within the lesser of three (3) years after the publication date of the newspaper notice, or any other applicable limitations period established by applicable law:

(1) A claimant who was not given written notice under Section 79-4-14.06;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred by Section 79-4-14.06(c) or Section 79-4-14.07(c) may be enforced:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) Except as provided in Section 79-4-14.08(d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

SOURCES: Laws, 1987, ch. 486, § 14.07; Laws, 1990, ch. 538, § 6; Laws, 2001, ch. 435, § 17; Laws, 2004, ch. 495, § 11; Laws, 2012, ch. 382, § 34, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote (b)(1).

§ 79-4-14.08. Dissolved corporations — chancery court proceedings for security payment of claims; notice; guardian ad litem; satisfaction of claim.

[Effective until January 1, 2013, this section will read:]

(a) A dissolved corporation that has published a notice under Section 79-4-14.07 may file an application with the chancery court of the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under Section 79-4-14.07(c).

(b) Within ten (10) days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

[Effective from and after January 1, 2013, this section will read:]

(a) A dissolved corporation that has published a notice under Section 79-4-14.07 may file an application with the chancery court of the county where the dissolved corporation's principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise

after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under Section 79-4-14.07(c).

(b) Within ten (10) days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

SOURCES: Laws, 2001, ch. 435, § 18; Laws, 2012, ch. 382, § 35, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, in (a), deleted "(or, if none in this state, its registered office)" preceding "is located" and added "or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state" thereafter.

SUBARTICLE B.

ADMINISTRATIVE DISSOLUTION.

SEC.

- | | |
|-------------|---|
| 79-4-14.20. | Grounds for administrative dissolution. |
| 79-4-14.21. | Procedure for and effect of administrative dissolution. |
| 79-4-14.22. | Reinstatement following administrative dissolution. |
| 79-4-14.23. | Appeal from denial of reinstatement. |

§ 79-4-14.20. Grounds for administrative dissolution.

[Effective until January 1, 2013, this section will read:]

The Secretary of State may commence a proceeding under Section 79-4-14.21 to administratively dissolve a corporation if:

- (1) The corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Sections 79-4-1.01 et seq. or other law;
- (2) The corporation does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;
- (3) The corporation is without registered agent or registered office in this state for sixty (60) days or more;
- (4) The corporation does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that

its registered agent has resigned, or that its registered office has been discontinued; or

(5) The corporation's period of duration stated in its articles of incorporation expires.

[Effective from and after January 1, 2013, this section will read:]

The Secretary of State may commence a proceeding under Section 79-4-14.21 to administratively dissolve a corporation if:

(1) The corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Sections 79-4-1.01 et seq. or other law;

(2) The corporation does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(3) The corporation is without a registered agent in this state for sixty (60) days or more;

(4) The corporation does not notify the Secretary of State within sixty (60) days that its registered agent has been changed, or that its registered agent has resigned;

(5) The corporation's period of duration stated in its articles of incorporation expires; or

(6) An incorporator, director, officer or agent of the corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing.

SOURCES: Laws, 1987, ch. 486, § 14.20; Laws, 2012, ch. 382, § 36, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, deleted "or registered office" following "registered agent" in (3) and (4) deleted "or that its registered office has been discontinued" at the end of (4); added (6); and made minor stylistic changes.

JUDICIAL DECISIONS

I. Under Current Law.

1. President's liability.

I. Under Current Law.

1. President's liability.

Liability for corporate debt was limited to those officers and directors who were actively involved in the control and management of the corporation, and the president's testimony at trial made it clear he was involved in the control and management of the corporation; however, where there was no proof of any assignment to the president by the corporation of any

chose in action as contemplated under Miss. Code § 11-7-7, the president had no standing to pursue the action on behalf of the corporation. Consequently, although the president, individually, could have been held liable for the corporate torts committed by the corporation, he had no authority to sue on a contract that belonged to the corporation; accordingly, all claims brought by the corporation and the president were dismissed. 4 H Constr. Corp. v. Superior Boat Works, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 83183 (N.D. Miss. Sept. 11, 2009).

§ 79-4-14.21. Procedure for and effect of administrative dissolution.

[Effective until January 1, 2013, this section will read:]

(a) If the Secretary of State determines that one or more grounds exist under Section 79-4-14.20 for dissolving a corporation, he shall serve the corporation with written notice of his determination under Section 79-4-5.04, except that such determination may be served by first class mail.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected under Section 79-4-5.04, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under Section 79-4-5.04, except that such certificate may be served by first class mail.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under Section 79-4-14.05 and notify claimants under Sections 79-4-14.06 and 79-4-14.07.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

[Effective from and after January 1, 2013, this section will read:]

(a) If the Secretary of State determines that one or more grounds exist under Section 79-4-14.20 for dissolving a corporation, he shall serve the corporation with written notice of his determination, except that such determination may be served by first-class mail.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation, except that such certificate may be served by first-class mail.

(c) [Reserved]

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

(e) The administrative dissolution of a corporation shall not impair the validity of any contract, deed, mortgage, security interest, lien, or act of the corporation or prevent the corporation from defending any action, suit or proceeding in any court of this state.

(f) A corporation that has been administratively dissolved may not maintain any action, suit or proceeding in any court of this state until the corporation is reinstated.

SOURCES: Laws, 1987, ch. 486, § 14.21; Laws, 1991, ch. 509, § 2; Laws, 2012, ch. 382, § 37; Laws, 2012, ch. 481, § 36, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Section 36 of Chapter 481 Laws of 2012, effective January 1, 2013 (approved April 24, 2012), amended this section. Section 37 of Chapter 382, Laws of 2012, effective January 1, 2013 (approved April 17, 2012), also amended this section. As set out above, this section reflects the language of Section 36 of Chapter 481, Laws of 2012, which contains language that specifically provides that it supersedes § 79-4-14.22 as amended by Laws of 2012, ch. 382.

Amendment Notes — The first 2012 amendment (ch. 382), deleted “under Section 79-4-5.04” preceding “except that such determination” in (a); in (b), deleted “under Section 79-4-5.04” following “notice is perfected” in the first sentence, and deleted “under Section 79-4-5.04” preceding “except that such certificate may be served” in the last sentence.

The second 2012 amendment (ch. 481), effective January 1, 2013, deleted “under Section 79-4-5.04” following “written notice of his determination” in (a); in (b), deleted “under Section 79-4-5.04” following “notice is perfected” in the first sentence, and preceding “except that such certificate” in the last sentence; rewrote (c); and added (e) and (f).

JUDICIAL DECISIONS

1. Standing to enter into contracts.

Pursuant to Miss. Code Ann. § 79-4-14.21(c) the corporate existence of the corporation continued, but it was not authorized to carry on any business except that necessary to wind up and liquidate its business and affairs. Because the corporation failed to comply with the process under § 79-4-14.22(a) to reinstate the corporation, the court found that during the period relevant to the present litigation,

the corporation was not a viable entity and thus did not have standing to enter into the contracts at issue; therefore, it followed that the corporation’s claims for breach of contract, misrepresentation, and quantum meruit were moot and had to be dismissed. 4 H Constr. Corp. v. Superior Boat Works, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 83183 (N.D. Miss. Sept. 11, 2009).

§ 79-4-14.22. Reinstatement following administrative dissolution.

[Effective until January 1, 2013, this section will read:]

(a) A corporation administratively dissolved under Section 79-4-14.21 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The applicant must:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated;
- (3) State that the corporation’s name satisfies the requirements of Section 79-4-4.01; and
- (4) Contain a certificate from the Mississippi State Tax Commission reciting that all taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, he

shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation under Section 79-4-5.04.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

[Effective from and after January 1, 2013, this section will read:]

(a) A corporation administratively dissolved under Section 79-4-14.21 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The applicant must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation's name satisfies the requirements of Section 79-4-4.01; and

(4) Contain a certificate from the Mississippi Department of Revenue reciting that all taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation.

(c) When the reinstatement is effective:

(1) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution;

(2) Any liability incurred by the corporation, director, officer or a shareholder after the administrative dissolution and before the reinstatement shall be determined as if the administrative dissolution had never occurred; and

(3) The corporation may resume carrying on its business as if the administrative dissolution had never occurred.

SOURCES: Laws, 1987, ch. 486, § 14.22; Laws, 1993, ch. 368, § 13; Laws, 2009, ch. 527, § 1; Laws, 2009, ch. 530, § 3; Laws, 2012, ch. 382, § 38; Laws, 2012, ch. 481, § 37, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Section 37 of Chapter 481 Laws of 2012, effective January 1, 2013 (approved April 24, 2012), amended this section. Section 38 of Chapter 382, Laws of 2012, effective January 1, 2013 (approved April 17, 2012), also amended this section. As set out above, this section reflects the language of Section 37 of Chapter 481, Laws of 2012, which contains language that specifically provides that it supersedes § 79-4-14.22 as amended by Laws of 2012, ch. 382.

Amendment Notes — The first 2012 amendment (ch. 382), substituted "Department of Revenue" for "State Tax Commission" in (a)(4); and deleted "under Section 79-4-5.04" following "copy on the corporation" at the end of (b).

The second 2012 amendment (ch. 481), effective January 1, 2013, substituted “Department of Revenue” for “State Tax Commission” preceding “reciting that all taxes owed by the corporation” in (a)(4); and deleted “under Section 79-4-5.04” following “copy on the corporation” at the end of (b); and rewrote (c).

JUDICIAL DECISIONS

1. Failure to comply with reinstatement process.

Pursuant to Miss. Code Ann. § 79-4-14.21(c) the corporate existence of the corporation continued, but it was not authorized to carry on any business except that necessary to wind up and liquidate its business and affairs. Because the corporation failed to comply with the process under § 79-4-14.22(a) to reinstate the corporation, the court found that during the

period relevant to the present litigation, the corporation was not a viable entity and thus did not have standing to enter into the contracts at issue; therefore, it followed that the corporation’s claims for breach of contract, misrepresentation, and quantum meruit were moot and had to be dismissed. 4 H Constr. Corp. v. Superior Boat Works, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 83183 (N.D. Miss. Sept. 11, 2009).

§ 79-4-14.23. Appeal from denial of reinstatement.

[Effective until January 1, 2013, this section will read:]

(a) If the Secretary of State denies a corporation’s application for reinstatement following administrative dissolution, he shall serve the corporation under Section 79-4-5.04 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County, Mississippi, or the chancery court of the county where the corporation is domiciled within thirty (30) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State’s certificate of dissolution, the corporation’s application for reinstatement and the Secretary of State’s notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court’s final decision may be appealed as in other civil proceedings.

[Effective from and after January 1, 2013, this section will read:]

(a) If the Secretary of State denies a corporation’s application for reinstatement following administrative dissolution, he shall serve the corporation with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county where the corporation’s principal office is located or where the corporation is domiciled within thirty (30) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of

State's certificate of dissolution, the corporation's application for reinstatement and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 1987, ch. 486, § 14.23; Laws, 2009, ch. 527, § 2; Laws, 2012, ch. 382, § 39, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment deleted “under Section 79-4-5.04” following “shall serve the corporation” in (a); in (b), deleted “Mississippi” following “Hinds County” and inserted “corporation’s principal office is located or where the” preceding “corporation is domiciled within thirty (30) days” in the first sentence.

SUBARTICLE C.

JUDICIAL DISSOLUTION.

SEC.

79-4-14.31. Procedure for judicial dissolution.

§ 79-4-14.31. Procedure for judicial dissolution.

[Effective until January 1, 2013, this section will read:]

(a) Venue for a proceeding brought by any party named in Section 79-4-14.30 lies in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) Within ten (10) days of the commencement of a proceeding under Section 79-4-14.30(2) to dissolve a corporation that is not a public corporation, the corporation shall send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under Section 79-4-14.34 and accompanied by a copy of Section 79-4-14.34.

[Effective from and after January 1, 2013, this section will read:]

(a) Venue for a proceeding brought by any party named in Section 79-4-14.30 lies in the county where a corporation's principal office is or was located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) Within ten (10) days of the commencement of a proceeding under Section 79-4-14.30(2) to dissolve a corporation that is not a public corporation, the corporation shall send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under Section 79-4-14.34 and accompanied by a copy of Section 79-4-14.34.

SOURCES: Laws, 1987, ch. 486, § 14.31; Laws, 1990, ch. 538, § 8; Laws, 1993, ch. 368, § 12; Laws, 1994, ch. 417, § 3; Laws, 2006, ch. 429, § 13; Laws, 2012, ch. 382, § 40, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote (a).

ARTICLE 15.

FOREIGN CORPORATIONS.

| | |
|---|------------|
| Subarticle A. Certificate of Authority..... | 79-4-15.01 |
| Subarticle B. Withdrawal..... | 79-4-15.20 |
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SUBARTICLE A.

CERTIFICATE OF AUTHORITY.

| | |
|-------------|--|
| SEC. | |
| 79-4-15.01. | Authority to transact business required. |
| 79-4-15.02. | Consequences of transacting business without authority. |
| 79-4-15.03. | Application for certificate of authority. |
| 79-4-15.04. | Amended certificate of authority. |
| 79-4-15.06. | Corporate name of foreign corporation. |
| 79-4-15.10. | Service of process, demand or notice on foreign corporation. |

§ 79-4-15.01. Authority to transact business required.

[Effective until January 1, 2013, this section will read:]

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

- (1) Maintaining, defending or settling any proceeding;
- (2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
- (3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(9) Owning, without more, real or personal property;

(10) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;

(11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) is not exhaustive.

(d) A foreign corporation which is a partner or member of any general partnership, limited partnership (other than a limited partner), joint venture, syndicate, pool or other association of any kind, whether or not such foreign corporation shares with or delegates to others control of such entity, which entity is transacting business in this state, is hereby declared to be transacting business in this state.

[Effective from and after January 1, 2013, this section will read:]

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

(1) Maintaining, defending or settling any proceeding;

(2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(9) Owning, without more, real or personal property;

(10) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;

(11) Transacting business in interstate commerce;

(12) Being a shareholder in a corporation or a foreign corporation that transacts business in this state;

(13) Being a limited partner of a limited partnership or foreign limited partnership that is transacting business in this state;

(14) Being a member or manager of a limited liability company or foreign limited liability company that is transacting business in this state.

(c) The list of activities in subsection (b) is not exhaustive.

(d) A foreign corporation which is general partner of any general or limited partnership, which partnership is transacting business in this state, is hereby declared to be transacting business in this state.

SOURCES: Laws, 1987, ch. 486, § 15.01; Laws, 1990, ch. 538, § 9; Laws, 2012, ch. 481, § 38, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, added (b)(12) through (14); and rewrote (d).

§ 79-4-15.02. Consequences of transacting business without authority.

[Effective until January 1, 2013, this section will read:]

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of Ten Dollars (\$10.00) for each day, but not to exceed a total of One Thousand Dollars (\$1,000.00) for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

[Effective from and after January 1, 2013, this section will read:]

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of Ten Dollars (\$10.00) for each day, but not to exceed a total of One Thousand Dollars (\$1,000.00) for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority shall not impair the validity of any contract, deed, mortgage, security interest, lien or act of such foreign corporation or prevent the foreign corporation from defending any action, suit or proceeding in any court of this state.

SOURCES: Laws, 1987, ch. 486, § 15.02; Laws, 2012, ch. 481, § 39, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote (e).

§ 79-4-15.03. Application for certificate of authority.

[Effective until January 1, 2013, this section will read:]

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of Section 79-4-15.06;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation and period of duration;

(4) The street address of its principal office;

(5) The address of its registered office in this state and the name of its registered agent at that office; and

(6) The names and usual business addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by

the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

[Effective from and after January 1, 2013, this section will read:]

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of Section 79-4-15.06;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation and period of duration;

(4) The street address of its principal office;

(5) The information required by Section 79-35-5(a); and

(6) The names and usual business addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

SOURCES: Laws, 1987, ch. 486, § 15.03; Laws, 2012, ch. 382, § 41, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote (a)(5).

§ 79-4-15.04. Amended certificate of authority.

[Effective until January 1, 2013, this section will read:]

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) Its corporate name;

(2) The period of its duration; or

(3) The state or country of its incorporation.

(b) The requirements of Section 79-4-15.03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

[Effective from and after January 1, 2013, this section will read:]

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) Its corporate name;

(2) The period of its duration;

(3) Any of the information required by Section 79-35-5(a); or

(4) The state or country of its incorporation.

(b) The requirements of Section 79-4-15.03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

SOURCES: Laws, 1987, ch. 486, § 15.04; Laws, 2012, ch. 382, § 42, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment added (a)(3); and made a minor stylistic change.

§ 79-4-15.06. Corporate name of foreign corporation.

[Effective until January 1, 2013, ch. 481, this section will read:]

(a) If the corporate name of a foreign corporation does not satisfy the requirements of Section 79-4-4.01, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) May add the word “corporation,” “incorporated,” “company” or “limited,” or the abbreviation “corp.,” “inc.,” “co.” or “ltd.,” to its corporate name for use in this state; or

(2) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d), the corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under Section 79-4-4.02 or 79-4-4.03;

(3) The fictitious name of another foreign corporation authorized to transact business in this state; and

(4) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation (incorporated or authorized to transact business in this state) that is not distinguishable upon his records from the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign corporation that is used in this

state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

- (1) Has merged with the other corporation;
- (2) Has been formed by reorganization of the other corporation; or
- (3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of Section 79-4-4.01, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of Section 79-4-4.01 and obtains an amended certificate of authority under Section 79-4-15.04.

[Effective from and after January 1, 2013, ch. 481, this section will read:]

(a) If the corporate name of a foreign corporation does not satisfy the requirements of Section 79-4-4.01, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) May add the word “corporation,” “incorporated,” “company” or “limited,” or the abbreviation “corp.,” “inc.,” “co.” or “ltd.,” to its corporate name for use in this state; or

(2) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d), the corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) The fictitious name of another foreign corporation or foreign limited liability company authorized to transact business in this state;

(3) The corporate name of a nonprofit corporation incorporated or authorized to transact business in this state;

(4) The name of a limited partnership, limited liability partnership or limited liability company that is organized or registered under the laws of this state and which has not been dissolved; and

(5) A name that is reserved or registered in the Office of the Secretary of State for any of the entities named in subsection (b) which reservation or registration has not expired.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation (incorporated or authorized to transact business in this state) that is not distinguishable upon his records from the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name

to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of Section 79-4-4.01, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of Section 79-4-4.01 and obtains an amended certificate of authority under Section 79-4-15.04.

SOURCES: Laws, 1987, ch. 486, § 15.06; Laws, 2012, ch. 481, § 40, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote (b)(2) and (3); added (b)(4) and (5); and made minor stylistic changes.

§ 79-4-15.07. Registered office and registered agent of foreign corporation [Repealed effective January 1, 2013].

SOURCES: Laws, 1987, ch. 486, § 15.07, eff from and after January 1, 1988.

Editor's Note — Laws of 2012, ch. 382, § 127, effective January 1, 2013, provides: "SECTION 127. Section 79-4-15.07, Mississippi Code of 1972, which provides for the registered office of a registered agent of a foreign corporation, is repealed."

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-4-15.08. Change of registered officer or registered agent of foreign corporation [Repealed effective January 1, 2013].

SOURCES: Laws, 1987, ch. 486, § 15.08, eff from and after January 1, 1988.

Editor's Note — Laws of 2012, ch. 382, § 128, effective January 1, 2013, provides: "SECTION 128. Section 79-4-15.08, Mississippi Code of 1972, which provides for the change of an officer or registered agent of a foreign corporation, is repealed."

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-4-15.09. Resignation of registered agent of foreign corporation [Repealed effective January 1, 2013].

SOURCES: Laws, 1987, ch. 486, § 51.09, eff from and after January 1, 1988.

Editor's Note — Laws of 2012, ch. 382, § 129, provides:

“SECTION 129. Section 79-4-15.09, Mississippi Code of 1972, which provides for the resignation of a registered agent of a foreign corporation, is repealed.”

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-4-15.10. Service of process, demand or notice on foreign corporation.

[Effective until January 1, 2013, this section will read:]

(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under Section 79-4-15.20; or

(3) Has had its certificate of authority revoked under Section 79-4-15.31.

(c) Service is perfected under subsection (b) at the earliest of:

(1) The date the foreign corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

[Effective from and after January 1, 2013, this section will read:]

Notice or demand required or permitted by law on a foreign corporation authorized to transact business in this state is governed by Section 79-35-13. Service of process is governed by the Mississippi Rules of Civil Procedure.

SOURCES: Laws, 1987, ch. 486, § 15.10; Laws, 2012, ch. 382, § 43, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote the section.

SUBARTICLE B.

WITHDRAWAL.

SEC.

79-4-15.20. Withdrawal of foreign corporations.

§ 79-4-15.20. Withdrawal of foreign corporations.**[Effective until January 1, 2013, this section will read:]**

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (3); and

(5) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the Secretary of State under this section is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the mailing address set forth in its application for withdrawal.

[Effective from and after January 1, 2013, this section will read:]

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of

process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which the Secretary of State may mail a copy of any process served on him under paragraph (3) of this subsection; and

(5) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the Secretary of State under the Mississippi Rules of Civil Procedure is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the mailing address set forth in its application for withdrawal.

SOURCES: Laws, 2005, ch. 502, § 2; Laws, 2012, ch. 382, § 44, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment in (b)(4), substituted “paragraph” for “subdivision” preceding “(3)”, and inserted “of this subsection” thereafter; and substituted “the Mississippi Rules of Civil Procedure” for “this section” following “Secretary of State under” in (c).

SUBARTICLE C.

REVOCATION OF CERTIFICATE OF AUTHORITY.

SEC.

- 79-4-15.30. Grounds for revocation.
- 79-4-15.31. Procedure for and effect of revocation.
- 79-4-15.32. Appeal from revocation.
- 79-4-15.33. Appeal from denial of reinstatement.

§ 79-4-15.30. Grounds for revocation.

[Effective until January 1, 2013, this section will read:]

The Secretary of State may commence a proceeding under Section 79-4-15.31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(2) The foreign corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Sections 79-4-1.01 et seq. or other law;

(3) The foreign corporation is without a registered agent or registered office in this state for sixty (60) days or more;

(4) The foreign corporation does not inform the Secretary of State under Section 79-4-15.08 or 79-4-15.09 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation or discontinuance;

(5) An incorporator, director, officer or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(6) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

[Effective from and after January 1, 2013, this section will read:]

The Secretary of State may commence a proceeding under Section 79-4-15.31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(2) The foreign corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Sections 79-4-1.01 et seq. or other law;

(3) The foreign corporation is without a registered agent in this state for sixty (60) days or more;

(4) The foreign corporation does not inform the Secretary of State by an appropriate filing that its registered agent has changed or that its registered agent has resigned, within sixty (60) days of the change or resignation;

(5) An incorporator, director, officer or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(6) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

SOURCES: Laws, 1987, ch. 486, § 15.30; Laws, 2012, ch. 382, § 45, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment deleted “or registered office” following “a registered agent” in (3); and rewrote (4).

§ 79-4-15.31. Procedure for and effect of revocation.

[Effective until January 1, 2013, this section will read:]

(a) If the Secretary of State determines that one or more grounds exist under Section 79-4-15.30 for revocation of a certificate of authority, he shall serve the foreign corporation with written notice of his determination under Section 79-4-15.10, except that such determination may be served by first class mail.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected under Section 79-4-15.10, the

Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under Section 79-4-15.10, except that such certificate may be served by first class mail.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

[Effective from and after January 1, 2013, this section will read:]

(a) If the Secretary of State determines that one or more grounds exist under Section 79-4-15.30 for revocation of a certificate of authority, he shall serve the foreign corporation with written notice of his determination under Section 79-4-15.10, except that such determination may be served by first class mail.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected under Section 79-4-15.10, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under Section 79-4-15.10, except that such certificate may be served by first-class mail.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under the Mississippi Rules of Civil Procedure is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual

report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

(f) The administrative revocation of a foreign corporation's certificate of authority shall not impair the validity of any contract, deed, mortgage, security interest, lien or act of such foreign corporation or prevent the foreign corporation from defending any action, suit or proceeding with any court of this state.

(g) A foreign corporation whose registration has been administratively revoked may not maintain any action, suit or proceeding in any court of this state until such foreign corporation's certificate of authority has been reinstated.

SOURCES: Laws, 1987, ch. 486, § 15.31; Laws, 1991, ch. 509, § 3; Laws, 2012, ch. 382, § 46; Laws, 2012, ch. 481, § 41, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Section 41 of Chapter 481, Laws of 2012, effective January 1, 2013 (approved April 24, 2012), amended this section. Section 46 of Chapter 382, Laws of 2012, effective January 1, 2013 (approved April 17, 2012), also amended this section. As set out above, this section reflects the language of Section 41 of Chapter 481, Laws of 2012, which contains language that specifically provides that it supersedes § 79-4-15.31 as amended by Laws of 2012, ch. 382.

Amendment Notes — The first 2012 amendment (ch. 382), substituted “the Mississippi Rules of Civil Procedure” for “this subsection” in the second sentence of (d).

The second 2012 amendment (ch. 481), effective January 1, 2013, substituted “the Mississippi Rules of Civil Procedure” for “this subsection” preceding “is service on the foreign corporation” in (d); and added (f) and (g).

§ 79-4-15.32. Appeal from revocation.

[Effective until January 1, 2013, this section will read:]

(a) A foreign corporation whose certificate of authority is administratively revoked under Section 79-4-15.31 may apply to the Secretary of State for reinstatement at any time after the effective date of such revocation. The application must:

(1) Recite the name of the corporation and the effective date of the administrative revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated;

(3) State that the corporation's name satisfies the requirements of Section 79-4-4.01; and

(4) Contain a certificate from the Mississippi State Tax Commission reciting that the corporation has properly filed all reports and paid all taxes and penalties required by revenue laws of this state.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, he shall reinstate the certificate of authority, prepare a certificate that recites his

determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under Section 79-4-5.04.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred.

[Effective from and after January 1, 2013, this section will read:]

(a) A foreign corporation whose certificate of authority is administratively revoked under Section 79-4-15.31 may apply to the Secretary of State for reinstatement at any time after the effective date of such revocation. The application must:

(1) Recite the name of the corporation and the effective date of the administrative revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated;

(3) State that the corporation's name satisfies the requirements of Section 79-4-4.01; and

(4) Contain a certificate from the Mississippi Department of Revenue reciting that the corporation has properly filed all reports and paid all taxes and penalties required by revenue laws of this state.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, he shall reinstate the certificate of authority, prepare a certificate that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under Section 79-35-13.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation. Any liability incurred by the foreign corporation or a director, officer or shareholder after the administrative revocation and before the reinstatement shall be determined as if the administrative revocation had never occurred, and the corporation resumes carrying on its business as if the administrative revocation had never occurred.

SOURCES: Laws, 1987, ch. 486, § 15.32; Laws, 1991, ch. 509, § 4; Laws, 1993, ch. 368, § 14; Laws, 2009, ch. 527, § 3; Laws, 2009, ch. 530, § 4; Laws, 2012, ch. 382, § 47; Laws, 2012, ch. 481, § 42, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Section 42 of Chapter 481, Laws of 2012, effective January 1, 2013 (approved April 24, 2012), amended this section. Section 47 of Chapter 382, Laws of 2012, effective January 1, 2013 (approved April 17, 2012), also amended this section. As set out above, this section reflects the language of Section 42 of Chapter 481, Laws of 2012, which contains language that specifically provides that it supersedes § 79-4-15.32 as amended by Laws of 2012, ch. 382.

Amendment Notes — The first 2012 amendment (ch. 382), substituted "Department of Revenue" for "State Tax Commission" following "Mississippi" in (a)(4); and substituted "79-35-13" for "79-4-5.04" at the end of (b).

The second 2012 amendment (ch. 481), effective January 1, 2013, substituted "Department of Revenue" for "State Tax Commission" preceding "reciting that the

corporation has properly filed” in (a)(4); substituted “79-35-13” for “79-4-5.04” at the end of (b); and divided former (c) into two sentences by adding the period and “Any liability incurred...revocation had never occurred.”

§ 79-4-15.33. Appeal from denial of reinstatement.

[Effective until January 1, 2013, this section will read:]

(a) If the Secretary of State denies a foreign corporation’s application for reinstatement following administrative revocation, he shall serve the corporation under Section 79-4-5.04, Mississippi Code of 1972, with a written communication that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county where the corporation is domiciled within thirty (30) days after service of the communication of denial is perfected. The corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State’s communication of denial.

(c) The court may summarily order the Secretary of State to reinstate the revoked corporation or may take other action the court considers appropriate.

(d) The court’s final decision may be appealed as in other civil proceedings.

[Effective from and after January 1, 2013, this section will read:]

(a) If the Secretary of State denies a foreign corporation’s application for reinstatement following administrative revocation, he shall serve the corporation with a written communication that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county where the corporation is domiciled or where the corporation’s principal office is located within thirty (30) days after service of the communication of denial is perfected. The corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State’s communication of denial.

(c) The court may summarily order the Secretary of State to reinstate the revoked corporation or may take other action the court considers appropriate.

(d) The court’s final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 1991, ch. 509, § 5; Laws, 2009, ch. 527, § 4; Laws, 2012, ch. 382, § 48, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment deleted “under Section 79-4-5.04” following “serve the corporation” in (a); and inserted “or where the corporation’s principal office is located” preceding “within thirty (30) days” near the end of the first sentence in (b).

ARTICLE 16.

RECORDS AND REPORTS.

| | |
|----------------------------|------------|
| Subarticle A. Records..... | 79-4-16.01 |
| Subarticle B. Reports..... | 79-4-16.20 |

SUBARTICLE A.

RECORDS.

| | |
|-------------|--|
| SEC. | |
| 79-4-16.01. | Corporate records. |
| 79-4-16.02. | Inspection of records by shareholders. |
| 79-4-16.04. | Court-ordered inspection. |
| 79-4-16.05. | Inspection of records by director. |
| 79-4-16.06. | Exception to notice requirement. |

§ 79-4-16.01. Corporate records.**[Effective until January 1, 2013, this section will read:]**

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation, all amendments to them currently in effect and any notices to shareholders referred to in Section 79-4-1.20(k)(5) regarding facts on which a filed document is dependent;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences and limitations, if shares issued pursuant to those resolutions are outstanding;

(4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;

(5) All written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under Section 79-4-16.20;

(6) A list of the names and business addresses of its current directors and officers; and

(7) Its most recent annual report delivered to the Secretary of State under Section 79-4-16.22.

[Effective from and after January 1, 2013, this section will read:]

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in the form of a document, including an electronic record, or in another form capable of conversion into paper form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation, all amendments to them currently in effect and any notices to shareholders referred to in Section 79-4-1.20(k)(5) regarding facts on which a filed document is dependent;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences and limitations, if shares issued pursuant to those resolutions are outstanding;

(4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;

(5) All written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under Section 79-4-16.20;

(6) A list of the names and business addresses of its current directors and officers; and

(7) Its most recent annual report delivered to the Secretary of State under Section 79-4-16.22.

SOURCES: Laws, 1987, ch. 486, § 1601; Laws, 2004, ch. 495, § 13; Laws, 2012, ch. 481, § 43, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote (d).

§ 79-4-16.02. Inspection of records by shareholders.

[Effective until January 1, 2013, this section will read:]

(a) Subject to Section 79-4-16.03(c), a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in Section 79-4-16.01(e) if he gives the corporation written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy.

(b) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) and gives the corporation written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (a) of this section;

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(c) A shareholder may inspect and copy the records identified in subsection (b) only if:

(1) His demand is made in good faith and for a proper purpose;

(2) He describes with reasonable particularity his purpose and the records he desires to inspect; and

(3) The records are directly connected with his purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(e) This section does not affect:

(1) The right of a shareholder to inspect records under Section 79-4-7.20 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;

(2) The power of a court, independently of Section 79-4-1.01 et seq., to compel the production of corporate records for examination.

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

[Effective from and after January 1, 2013, this section will read:]

(a) Subject to Section 79-4-16.03(c), a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in Section 79-4-16.01(e) if he gives the corporation a signed written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy.

(b) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) and gives the corporation a signed written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (a) of this section;

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(c) A shareholder may inspect and copy the records identified in subsection (b) only if:

(1) His demand is made in good faith and for a proper purpose;

(2) He describes with reasonable particularity his purpose and the records he desires to inspect; and

(3) The records are directly connected with his purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(e) This section does not affect:

(1) The right of a shareholder to inspect records under Section 79-4-7.20 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;

(2) The power of a court, independently of Section 79-4-1.01 et seq., to compel the production of corporate records for examination.

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

SOURCES: Laws, 1987, ch. 486, § 16.02; Laws, 1988, ch. 369, § 6; Laws, 2012, ch. 481, § 44, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, inserted "a signed" preceding "written notice of his demand" in (a) and (b).

§ 79-4-16.04. Court-ordered inspection.

[Effective until January 1, 2013, this section will read:]

(a) If a corporation does not allow a shareholder who complies with Section 79-4-16.02(a) to inspect and copy any records required by that subsection to be available for inspection, the chancery court of the county where the corporation's principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with Section 79-4-16.02(b) and (c) may apply to the chancery court in the county where the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

[Effective from and after January 1, 2013, this section will read:]

(a) If a corporation does not allow a shareholder who complies with Section 79-4-16.02(a) to inspect and copy any records required by that subsection to be available for inspection, the chancery court of the county where the corporation's principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with Section 79-4-16.02(b) and (c) may apply to the chancery court in the county where the corporation's principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

SOURCES: Laws, 1987, ch. 486, § 16.04; Laws, 2012, ch. 382, § 49, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment substituted “principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the

corporation does not have a principal office in this state” for “principal office (or, if none in this state, its registered office) is located” in (a) and (b).

§ 79-4-16.05. Inspection of records by director.

[Effective until January 1, 2013, this section will read:]

(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director’s duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The chancery court of the county where the corporation’s principal office (or if none in the state, its registered office) is located may order inspection and copying of the books, records and documents at the corporation’s expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director’s costs (including reasonable counsel fees) incurred in connection with the application.

[Effective from and after January 1, 2013, this section will read:]

(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director’s duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The chancery court of the county where the corporation’s principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, may order inspection and copying of the books, records and documents at the corporation’s expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director’s costs (including reasonable counsel fees) incurred in connection with the application.

SOURCES: Laws, 2001, ch. 435, § 21; Laws, 2012, ch. 382, § 50, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment substituted “principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state” for “principal office (or if none in the state, its registered office) is located” preceding “may order inspection” in (b).

§ 79-4-16.06. Exception to notice requirement.

[Effective until January 1, 2013, this section will read:]

(a) Whenever notice is required to be given under any provision of this act to any shareholder, such notice shall not be required to be given if:

(1) Notice of two (2) consecutive annual meetings, and all notices of meetings during the period between such two (2) consecutive annual meetings, have been sent to such shareholder at such shareholder’s address as shown on the records of the corporation and have been returned undeliverable; or

(2) All, but not less than two (2), payments or dividends on securities during a twelve-month period, or two (2) consecutive payments of dividends on securities during a period of more than twelve (12) months, have been sent to such shareholder at such shareholder’s address as shown on the records of the corporation and have been returned undeliverable.

(b) If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder’s then current address, the requirement that notice be given to such shareholder shall be reinstated.

[Effective from and after January 1, 2013, this section will read:]

(a) Whenever notice would otherwise be required to be given under any provision of this act to a shareholder, such notice need not be given if:

(1) Notices to the shareholders of two (2) consecutive annual meetings, and all notices of meetings during the period between such two (2) consecutive annual meetings, have been sent to such shareholder at such shareholder’s address as shown on the records of the corporation and have been returned undeliverable or could not be delivered; or

(2) All, but not less than two (2), payments or dividends on securities during a twelve-month period, or two (2) consecutive payments of dividends on securities during a period of more than twelve (12) months, have been sent to such shareholder at such shareholder’s address as shown on the records of the corporation and have been returned undeliverable or could not be delivered.

(b) If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder’s then current address, the requirement that notice be given to such shareholder shall be reinstated.

SOURCES: Laws, 2001, ch. 435, § 22; Laws, 2012, ch. 481, § 45, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “notice would otherwise be required” for “notice is required in” in (a); in (a)(1), substituted “Notices to the shareholders” for “Notice” at the beginning and inserted “or could not be delivered” at the end; and added “or could not be delivered” at the end of (a)(2).

SUBARTICLE B.

REPORTS.

SEC.

79-4-16.20. Financial statements for shareholders.

79-4-16.22. Annual report to secretary of state.

§ 79-4-16.20. Financial statements for shareholders.

[Effective until January 1, 2013, ch. 481, this section will read:]

(a) A corporation shall furnish its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, his report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall deliver the annual financial statements to each shareholder within one hundred twenty (120) days after the close of each fiscal year. Thereafter, on written request from a shareholder to whom the statements were not delivered, the corporation shall mail him the latest financial statements.

[Effective from and after January 1, 2013, ch. 481, this section will read:]

(a) A corporation shall furnish its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a

statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, his report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall deliver the annual financial statements to each shareholder within one hundred twenty (120) days after the close of each fiscal year. Thereafter, on written request from a shareholder to whom the statements were not delivered, the corporation shall send the shareholder the latest financial statements. A public corporation may fulfill its responsibilities under this section by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the United States Securities and Exchange Commission.

SOURCES: Laws, 1987, ch. 486, § 16.20; Laws, 2004, ch. 495, § 14; Laws, 2012, ch. 481, § 46, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, in (c), substituted “send the shareholder” for “mail him” preceding “the latest financial statements” at the end, and added the last sentence.

§ 79-4-16.21. Other reports to shareholders [Repealed effective January 1, 2013].

Editor's Note — Laws of 2012, ch. 481, § 48, effective January 1, 2013, provides: “SECTION 48. Section 79-4-16.21, Mississippi Code of 1972, dealing with the reporting of the indemnification of or expense advances to a director in connection with a proceeding as well as certain issues of shares by the corporation, is repealed.”

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-4-16.22. Annual report to secretary of state.

[Effective until January 1, 2013, this section will read:]

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver within sixty (60) days of each anniversary date of its incorporation with respect to a domestic corporation or its authorization to transact business in this state with respect to a foreign corporation, or such other date as may be established by the Secretary of State

[see Editor's Note below], to the Secretary of State for filing an annual report that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The address of its registered office and the name of its registered agent at that office in this state;
- (3) The address of its principal office;
- (4) The names and business addresses of its directors and principal officers;
- (5) A brief description of the nature of its business;
- (6) The total number of authorized shares, itemized by class and series, if any, within each class; and
- (7) The total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) If an annual report does not contain the information required by this section, the Secretary of State shall notify promptly the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

[Effective from and after January 1, 2013, this section will read:]

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver within sixty (60) days of each anniversary date of its incorporation with respect to a domestic corporation or its authorization to transact business in this state with respect to a foreign corporation, or such other date as may be established by the Secretary of State, to the Secretary of State for filing an annual report that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The information required by Section 79-35-5(a);
- (3) The address of its principal office;
- (4) The names and business addresses of its directors and principal officers;
- (5) A brief description of the nature of its business;
- (6) The total number of authorized shares, itemized by class and series, if any, within each class; and
- (7) The total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) If an annual report does not contain the information required by this section, the Secretary of State shall notify promptly the reporting domestic or foreign corporation in writing and return the report to it for correction. If the

report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

SOURCES: Laws, 1987, ch. 486, § 16.22; Laws, 1992, ch. 361, § 1; Laws, 2012, ch. 382, § 51, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment deleted “[see Editor’s Note below]” from the last sentence in (a); and substituted “information required by Section 79-35-5(a)” for “address of its registered office and the name of its registered agent at that office in this state” in (a)(2).

ARTICLE 17.

TRANSITION PROVISIONS.

SEC.

79-4-17.05. Relation to Electronic Signatures in Global and National Commerce Act [Effective January 1, 2013].

§ 79-4-17.05. Relation to Electronic Signatures in Global and National Commerce Act [Effective January 1, 2013].

In the event that any provisions of this chapter are deemed to modify, limit or supersede the Federal Electronic Signatures in Global and National Commerce Act, 15 USCS Section 7001 et seq., the provisions of this chapter shall control to the maximum extent permitted by Section 102(a)(2) of that federal act.

SOURCES: Laws, 2012, ch. 481, § 47, eff from and after Jan. 1, 2013.

CHAPTER 10

Mississippi Professional Corporation Act

Article 2. Creation 79-10-11

ARTICLE 2.

CREATION.

SEC.

79-10-11. Election of professional corporation status.

§ 79-10-11. Election of professional corporation status.

(1) One or more persons may incorporate a professional corporation by delivering to the Secretary of State for filing articles of incorporation which include a statement that (a) it is a professional corporation, and (b) its purpose is to render the specified professional services.

(2) A corporation incorporated under a general law of this state (other than a professional corporation in existence on July 1, 1995, which is subject to the provisions of Section 79-10-111) may elect professional corporation status by amending its articles of incorporation to comply with subsection (1) of this section and Section 79-10-21.

(3) Nothing in this chapter shall be construed to require a person rendering professional services in this state to render such services through a professional corporation or foreign professional corporation unless a law of this state other than this chapter so requires.

SOURCES: Laws, 1995, ch. 494, § 4, eff from and after July 1, 1995.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in subsection (2) by substituting "...subsection (1) of this section..." for "...section (1) of this subsection..." The correction was ratified by the Joint Legislative Committee on Compilation, Revision and Publication at its July 22, 2010, meeting.

ARTICLE 4.

GOVERNANCE.

§ 79-10-63. Confidential relationship.

JUDICIAL DECISIONS

1. Liability.

Given the conclusion that an affair between the client's wife and the attorney was not related to the representation or arising therefrom, along with the client's admission that the affair was not motivated by a desire to benefit the law firm and the absence of any evidence that anyone at the law firm, other than the attorney, was aware of the secret and covert

affair prior to the client's demand, that was the type of frolic so clearly beyond an employee's course and scope of employment that it could not form the basis for a claim of vicarious liability on the part of the law firm, Miss. Code Ann. §§ 79-10-63(2), 79-10-67(2). *Baker Donelson Bearman Caldwell & Berkowitz, P.C. v. Seay*, 42 So. 3d 474 (Miss. 2010).

§ 79-10-67. Responsibility for professional services.

JUDICIAL DECISIONS

3. Liability.

Given the conclusion that an affair between the client's wife and the attorney was not related to the representation or arising therefrom, along with the client's admission that the affair was not motivated by a desire to benefit the law firm and the absence of any evidence that any-

one at the law firm, other than the attorney, was aware of the secret and covert affair prior to the client's demand, that was the type of frolic so clearly beyond an employee's course and scope of employment that it could not form the basis for a claim of vicarious liability on the part of the law firm, Miss. Code Ann. §§ 79-10-

63(2), 79-10-67(2). Baker Donelson
 Bearman Caldwell & Berkowitz, P.C. v.
 Seay, 42 So. 3d 474 (Miss. 2010).

CHAPTER 11

Nonprofit, Nonshare Corporations and Religious Societies

| | |
|---|-----------|
| Mississippi Nonprofit Corporation Act | 79-11-101 |
| Uniform Management of Institutional Funds Act | 79-11-601 |
| Uniform Prudent Management of Institutional Funds Act | 79-11-701 |

GENERAL PROVISIONS

§ 79-11-31. Religious societies.

Joint Legislative Committee Note — In 2009, typographical errors in subsection (2) were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting "...by and through representatives elected..." for "by and through representative elected..." in the first paragraph, and inserting the word "the" following "...body shall likewise have." The section as set out in the bound volume reflects these corrections, which were ratified by the Joint Committee at its July 22, 2010, meeting.

MISSISSIPPI NONPROFIT CORPORATION ACT

SEC.

- 79-11-109. Filing fees; fee for serving process upon Secretary of State; fees for copying and certifying copy of filed document.
- 79-11-115. Secretary of State to file documents; refusal to file document; filing of documents as ministerial.
- 79-11-117. Appeal of refusal to file document.
- 79-11-121. Certificate of existence, application for; contents of; conclusive evidence of good standing.
- 79-11-127. Definitions.
- 79-11-129. Notice, types; when effective; how addressed; electronic communications.
- 79-11-131. Petition to chancery court for alternative method for calling or conducting meeting of corporation members, delegates, or directors, or for obtaining their consent.
- 79-11-137. Contents of articles of incorporation.
- 79-11-163. Requirement that corporation maintain registered office and registered agent within state [Repealed effective January 1, 2013].
- 79-11-165. Change of registered office or registered agent of corporation [Repealed effective January 1, 2013].
- 79-11-197. Annual membership meeting.
- 79-11-199. Special meetings of members.
- 79-11-201. Court-ordered meeting of members.
- 79-11-203. Approval of action by members without holding meeting of members.
- 79-11-211. Corporate action taken by ballot without meeting.
- 79-11-213. Preparation of list of members entitled to notice of meeting and members entitled to vote at meeting; list to be open for inspection; court may order inspection and copying of lists.

- 79-11-221. Voting by proxy.
- 79-11-235. Number of directors.
- 79-11-267. Director to act in best interests of corporation; director's reliance upon others for information; liability of directors.
- 79-11-283. Recordkeeping requirements.
- 79-11-287. Conditions on right to inspect; member's agent or attorney has right to inspect and copy records; means of copying records; charges for copying documents by corporation; lists which satisfy demand for record of members.
- 79-11-289. Court-ordered inspection where corporation does not allow member to inspect and copy records.
- 79-11-299. Amendments to articles of incorporation which may be adopted by board of directors without action by members.
- 79-11-327. Merger of foreign corporation with domestic corporation.
- 79-11-345. Notice of dissolution and request for presentation of claims against corporation; statute of limitations; enforcement of claims.
- 79-11-347. Administrative dissolution by Secretary of State, grounds for.
- 79-11-349. Administrative dissolution, procedures.
- 79-11-351. Reinstatement after administrative dissolution.
- 79-11-353. Denial of application for reinstatement following administrative dissolution; appeals.
- 79-11-355. Dissolution by court order; parties who may bring action; grounds for court-ordered dissolution.
- 79-11-357. Court-ordered dissolution, venue; appropriate party defendants; authority of court with respect to.
- 79-11-367. Foreign corporation; application for certificate of authority.
- 79-11-369. Foreign corporation, amended certificate of authority.
- 79-11-377. Change of registered office or registered agent of foreign corporation [Repealed effective January 1, 2013].
- 79-11-381. Service of process, demand or notice on foreign corporation.
- 79-11-383. Withdrawal of foreign corporation.
- 79-11-385. Revocation of certificate of authority of foreign corporation, grounds.
- 79-11-389. Appeal of revocation.
- 79-11-391. Status report of corporation.
- 79-11-399. Effect of repeal of prior statutes.
- 79-11-405. Nonprofit corporation to notify Secretary of State of determination, suspension or revocation of exemption from tax as Section 501(c)(3) organization .

§ 79-11-101. Short title.

Joint Legislative Committee Note — In 2009, a typographical error in the section was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-103. Amendments and repeals.

Joint Legislative Committee Note — In 2009, typographical errors in the section were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” both times it appears. The section as set out in

the bound volume reflects these corrections, which were ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-107. Secretary may prescribe forms.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (2) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-109. Filing fees; fee for serving process upon Secretary of State; fees for copying and certifying copy of filed document.

[Effective until January 1, 2013, this section will read:]

(1) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

| Document | Fee |
|--|----------|
| (a) Articles of incorporation | \$50.00 |
| (b) Application for use of indistinguishable name | 25.00 |
| (c) Application for reserved name | 25.00 |
| (d) Notice of transfer of reserved name | 25.00 |
| (e) Application for registered name | 50.00 |
| (f) Application for renewal of registered name | 50.00 |
| (g) Corporation's statement of change of registered agent or registered office or both | 10.00 |
| (h) Agent's statement of change of registered office for each affected corporation | 10.00 |
| not to exceed a total of | 1,000.00 |
| (i) Agent's statement of resignation | No Fee |
| (j) Amendment of articles of incorporation | 50.00 |
| (k) Restatement of articles of incorporation with amendments .. | 50.00 |
| (l) Articles of merger | 50.00 |
| (m) Articles of dissolution | 25.00 |
| (n) Articles of revocation of dissolution | 25.00 |
| (o) Certificate of administrative dissolution | No Fee |
| (p) Application for reinstatement following administrative dissolution | 50.00 |
| (q) Certificate of reinstatement | No Fee |
| (r) Certificate of judicial dissolution | No Fee |
| (s) Application for certificate of authority | 100.00 |
| (t) Application for amended certificate of authority | 50.00 |
| (u) Application for certificate of withdrawal | 25.00 |
| (v) Certificate of revocation of authority to transact business .. | No Fee |

| | |
|--|-------|
| (w) Status report | 25.00 |
| (x) Articles of correction | 50.00 |
| (y) Application for certificate of existence or authorization | 25.00 |
| (z) Any other document required or permitted to be filed by Section 79-11-101 et seq. | 25.00 |

(2) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) upon being served with process under Section 79-11-101 et seq. The party to a proceeding causing service of process is entitled to recover the fee paid the Secretary of State as costs if the party prevails in the proceeding.

(3) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (a) One Dollar (\$1.00) a page for copying; and
- (b) Ten Dollars (\$10.00) for the certificate.

(4) The Secretary of State may collect a filing fee greater than the fee set forth in subsections (1), (2) and (3) in an amount not to exceed twice the fee set forth in subsections (1), (2) and (3) of processing the filing, if the form prescribed by the Secretary of State for such filing has not been used.

[Effective from and after January 1, 2013, this section will read:]

(1) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

| Document | Fee |
|---|---------|
| (a) Articles of incorporation | \$50.00 |
| (b) Application for use of indistinguishable name | 25.00 |
| (c) Application for reserved name | 25.00 |
| (d) Notice of transfer of reserved name | 25.00 |
| (e) Application for registered name | 50.00 |
| (f) Application for renewal of registered name | 50.00 |
| (g) [Reserved] | |
| (h) [Reserved] | |
| (i) [Reserved] | |
| (j) Amendment of articles of incorporation | 50.00 |
| (k) Restatement of articles of incorporation with amendments .. | 50.00 |
| (l) Articles of merger | 50.00 |
| (m) Articles of dissolution | 25.00 |
| (n) Articles of revocation of dissolution | 25.00 |
| (o) Certificate of administrative dissolution | No Fee |
| (p) Application for reinstatement following administrative dissolution | 50.00 |
| (q) Certificate of reinstatement | No Fee |
| (r) Certificate of judicial dissolution | No Fee |
| (s) Application for certificate of authority | 100.00 |
| (t) Application for amended certificate of authority | 50.00 |

| | |
|--|--------|
| (u) Application for certificate of withdrawal | 25.00 |
| (v) Certificate of revocation of authority to transact business . . | No Fee |
| (w) Status report | 25.00 |
| (x) Articles of correction | 50.00 |
| (y) Application for certificate of existence or authorization | 25.00 |
| (z) Any other document required or permitted to be filed by Section 79-11-101 et seq | 25.00 |

(2) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) upon being served with process under Section 79-11-101 et seq. The party to a proceeding causing service of process is entitled to recover the fee paid the Secretary of State as costs if the party prevails in the proceeding.

(3) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (a) One Dollar (\$1.00) a page for copying; and
- (b) Ten Dollars (\$10.00) for the certificate.

(4) The Secretary of State may collect a filing fee greater than the fee set forth in subsections (1), (2) and (3) in an amount not to exceed twice the fee set forth in subsections (1), (2) and (3) of processing the filing, if the form prescribed by the Secretary of State for such filing has not been used.

SOURCES: Laws, 1987, ch. 485, § 5; Laws, 1988, ch. 417, § 1; Laws, 1995, ch. 323, § 1; Laws, 2012, ch. 382, § 52, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (2) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

Amendment Notes — The 2012 amendment deleted former (1)(g), (h) and (i), which read: “(g) Corporation’s statement of change of registered agent or registered office or both....10.00,” “(h) Agent’s statement of change of registered office for each affected corporation10.00, not to exceed a total of1,000.00” and “(i) Agent’s statement of resignation ...No Fee” and reserved (1)(g), (h) and (i) for future use.

§ 79-11-115. Secretary of State to file documents; refusal to file document; filing of documents as ministerial.

[Effective until January 1, 2013, this section will read:]

(1) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of Section 79-11-105, the Secretary of State shall file it.

(2) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in Sections 79-11-167 and 79-11-379, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgement of the date and time of filing.

(3) Upon refusing to file a document, the Secretary of State shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason or reasons for the refusal.

(4) The Secretary of State's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:

- (a) Affect the validity or invalidity of the document in whole or in part;
- (b) Relate to the correctness or incorrectness of information contained in the document; or
- (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

[Effective from and after January 1, 2013, this section will read:]

(1) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of Section 79-11-105, the Secretary of State shall file it.

(2) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in Section 79-35-11, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

(3) Upon refusing to file a document, the Secretary of State shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason or reasons for the refusal.

(4) The Secretary of State's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:

- (a) Affect the validity or invalidity of the document, in whole or in part;
- (b) Relate to the correctness or incorrectness of information contained in the document; or
- (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

SOURCES: Laws, 1987, ch. 485, § 8; Laws, 1997, ch. 418, § 45; Laws, 2012, ch. 382, § 53, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment substituted "Section 79-35-11" for "Sections 79-11-167 and 79-11-379" in the last sentence of (2).

§ 79-11-117. Appeal of refusal to file document.

[Effective until January 1, 2013, this section will read:]

(1) If the Secretary of State refuses to file a document delivered for filing to the Secretary of State's office, the domestic or foreign corporation may appeal the refusal to the chancery court in the county where the corporation's principal office (or, if there is none in this state, its registered office) is or will be located. The appeal is commenced by petitioning the court to compel filing

the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file.

(2) The court may summarily order the Secretary of State to file the document or take other action the court considered appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

[Effective from and after January 1, 2013, this section will read:]

(1) If the Secretary of State refuses to file a document delivered for filing to the Secretary of State's office, the domestic or foreign corporation may appeal the refusal to the chancery court in the county where the corporation's principal office is or will be located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file.

(2) The court may summarily order the Secretary of State to file the document or take other action the court considered appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 1987, ch. 485, § 9; Laws, 2012, ch. 382, § 54, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote the first sentence in (1).

§ 79-11-121. Certificate of existence, application for; contents of; conclusive evidence of good standing.

(1) Any person may apply to the Secretary of State to furnish a certificate of existence for a domestic or foreign corporation.

(2) The certificate of existence sets forth:

(a) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) That (i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation and the period of its duration if less than perpetual; or (ii) that the foreign corporation is authorized to transact business in this state;

(c) That all fees, taxes, and penalties owed to this state have been paid, if (i) payment is reflected in the records of the Secretary of State and (ii) nonpayment affects the good standing of the domestic or foreign corporation;

(d) That its most recent status report required by Section 79-11-391 has been delivered to the Secretary of State;

(e) That articles of dissolution have not been filed; and

(f) Other facts of record in the Office of the Secretary of State that may be requested by the application.

(3) Subject to any qualification stated in the certificate, a certificate of existence issued by the Secretary of State may be relied upon as conclusive

evidence that the domestic or foreign corporation is in existence or is authorized to conduct activities in this state.

SOURCES: Laws, 1987, ch. 485, § 11; Laws, 2011, ch. 440, § 1, eff from and after Jan. 1, 2012.

Amendment Notes — The 2011 amendment, effective January 1, 2012, substituted “existence or is authorized to conduct activities” for “good standing” near the end of (3).

§ 79-11-125. Secretary granted power to perform duties.

Joint Legislative Committee Note — In 2009, a typographical error in the section was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-127. Definitions.

Unless the context otherwise requires in Section 79-11-101 et seq., the following terms shall have the meaning ascribed herein:

(a) “Approved by (or approval by) the members” means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by a written ballot or written consent in conformity with Section 79-11-101 et seq. or by the affirmative vote, written ballot or written consent of such greater proportion, including the votes of all the members of any class, unit or grouping as may be provided in the articles, bylaws or Section 79-11-101 et seq. for any specified member action.

(b) “Articles of incorporation” or “articles” include amended and restated articles of incorporation and articles of merger.

(c) “Board” or “board of directors” means the board of directors except that no person or group of persons are the board of directors because of powers delegated to that person or group pursuant to Section 79-11-231.

(d) “Bylaws” means the code or codes of rules (other than the articles) adopted pursuant to Section 79-11-101 et seq. for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(e) “Class” means a group of memberships which have the same rights with respect to voting, dissolution, redemption and transfer. For the purposes of this section, rights shall be considered the same if they are determined by a formula applied uniformly.

(f) “Conspicuous” means so written, displayed, or presented that a reasonable person against whom the record is to operate should have noticed it. For example, text in italics, boldface, contrasting color or capitals, or that is underlined, is conspicuous.

(g) "Corporation" means a nonprofit corporation subject to the provisions of Section 79-11-101 et seq., except a foreign corporation.

(h) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(i) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission, except that delivery to the Secretary of State means actual receipt by the Secretary of State.

(j) "Directors" means individuals, designated in the articles or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title to act as members of the board.

(k) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors or officers. Payment of reasonable compensation, fees, or expenses incurred in the performance of duties on behalf of the corporation is not a distribution.

(l) "Domestic corporation" means a corporation.

(m) "Effective date of notice" is defined in Section 79-11-129.

(n) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(o) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(p) "Employee" includes an officer but not a director. A director may accept duties that make the director an employee.

(q) "Entity" includes corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; corporation sole; business trust, estate, partnership, trust and two (2) or more persons having a joint or common economic interest; and state, United States and foreign government.

(r) "File," "filed" or "filing" means filed in the Office of the Secretary of State.

(s) "Foreign corporation" means a corporation organized under a law other than the law of this state which would be a nonprofit corporation if formed under the laws of this state.

(t) "Governmental subdivision" includes authority, county, district and municipality.

(u) "Includes" denotes a partial definition.

(v) "Individual" includes the estate of an incompetent individual.

(w) "Means" denotes a complete definition.

(x) "Member" means (without regard to what a person is called in the articles or bylaws) any person or persons who on more than one (1) occasion, pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

A person is not a member by virtue of any of the following:

(i) Any rights such person has as a delegate;

(ii) Any rights such person has to designate a director or directors; or

(iii) Any rights such person has as a director.

(y) "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws and Section 79-11-101 et seq.

(z) "Nonprofit corporation" means a corporation, no part of the assets, income or profit of which is distributed to or enures to the benefit of its members, directors or officers, except as otherwise provided under this chapter. In a corporation all of whose members are nonprofit corporations, distribution to members does not deprive it of the status of a nonprofit corporation.

(aa) "Notice" is defined in Section 79-11-129.

(bb) "Person" includes any individual or entity.

(cc) "Principal office" means the office (in or out of this state) where the principal executive offices of a domestic or foreign corporation are located.

(dd) "Proceeding" includes civil suit and criminal, administrative and investigatory action.

(ee) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(ff) "Record date" means the date established under Section 79-11-209 on which a corporation determines the identity of its members for the purposes of Section 79-11-101 et seq.

(gg) "Religious corporation" means a corporation organized and operating primarily or exclusively for religious purposes.

(hh) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under Section 79-11-273 for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(ii) "Sign" means with present intent to authenticate or adopt a record:

(i) To execute or adopt a tangible symbol; or

(ii) To attach to or logically associate with the record an electronic sound, symbol, or process as defined under Mississippi law.

(jj) "State," when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.

(kk) "United States" includes any district, authority, bureau, commission, department and any other agency of the United States.

(ll) "Vote" includes authorization by written ballot and written consent.

(mm) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class

shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

SOURCES: Laws, 1987, ch. 485, § 14; Laws, 1997, ch. 418, § 47; Laws, 2011, ch. 440, § 2, eff from and after Jan. 1, 2012.

Amendment Notes — The 2011 amendment, effective January 1, 2012, added (f), (n), (z) and (ee); redesignated former (f) through (l) as present (g) through (m), former (m) through (w) as present (o) through (y), former (x) through (aa) as present (aa) through (dd), and former (bb) through (ii) as present (ff) through (mm), added “except that delivery to the Secretary of State means actual receipt by the Secretary of State” at the end of (i), added the last sentence in (k), and rewrote (ii).

§ 79-11-129. Notice, types; when effective; how addressed; electronic communications.

(1) Notice under this chapter must be in the form of a record unless oral notice is authorized by this chapter or is reasonable under the circumstances.

(2) Notice may be communicated in person or by delivery. If these forms of communication are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television or other form of public broadcast communication.

(3) Oral notice is effective when communicated if communicated in a comprehensible manner.

(4) Written notice by a domestic or foreign corporation to a member, if in a comprehensible form, is effective:

(a) Upon deposit in the United States mail, if the postage or delivery charge is paid and the notice is correctly addressed to the member’s address shown in the corporation’s current record of members, or

(b) When given if the notice is delivered in any other manner that the member has authorized.

(5) Except as provided in subsection (4) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) When received;

(b) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed;

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member’s address shown in the corporation’s current list of members.

(7) A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member’s address shown in the corporation’s current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation’s current list of members, if addressed or delivered to one of such members, at the address appearing on the current list of members.

(8) Written notice is correctly addressed to a domestic or foreign corporation (authorized to transact business in this state), other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent status report or, in the case of a foreign corporation that has not yet delivered a status report, in its application for a certificate of authority.

(9) If Section 79-11-205 or any other provision of Section 79-11-101 et seq. prescribes notice requirements for particular circumstances, those requirements govern. If articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of Section 79-11-101 et seq., those requirements govern.

(10) With respect to electronic communications:

(a) Unless otherwise provided in the articles of incorporation or bylaws, or otherwise agreed between the sender and the recipient, an electronic communication is received when:

(i) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(ii) It is in a form capable of being processed by that system.

(b) An electronic communication is received under subsection (10)(a) even if no individual is aware of its receipt.

(c) Receipt of an electronic acknowledgement from an information processing system described in subsection (10)(a) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(11) An authorization by a member of delivery of notices or communications by e-mail or similar electronic means may be revoked by the member by notice to the nonprofit corporation in the form of a record. Such an authorization is deemed revoked if (a) the corporation is unable to deliver two (2) consecutive notices or other communications to the member in the manner authorized; and (b) the inability becomes known to the secretary or other person responsible for giving the notice or other communication; but the failure to treat the inability as a revocation does not invalidate any meeting or other action.

SOURCES: Laws, 1987, ch. 485, § 15; Laws, 1997, ch. 418, § 48; Laws, 2011, ch. 440, § 3, eff from and after Jan. 1, 2012.

Amendment Notes — The 2011 amendment, effective January 1, 2012, rewrote (1); substituted “or by delivery” for “by mail or other method of delivery; or by telephone, voice mail or other electronic means” in the first sentence in (2); rewrote (4); and added (10) and (11).

§ 79-11-131. Petition to chancery court for alternative method for calling or conducting meeting of corporation members, delegates, or directors, or for obtaining their consent.

[Effective until January 1, 2013, this section will read:]

(1) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws or Section 79-11-101 et seq., then upon petition of a director, officer, delegate, member or the Attorney General, the chancery court of the county where the corporation's principal office (or, if none in this state, its registered office) is located may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates or directors be authorized in such a manner as the court finds fair and equitable under the circumstances.

(2) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws and Section 79-11-101 et seq., whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws or Section 79-11-101 et seq.

(4) Whenever practical any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided, however, that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger or sale of assets.

(5) Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and which complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the force and effect as if it complied with every requirement imposed by the articles, bylaws and Section 79-11-101 et seq.

[Effective from and after January 1, 2013, this section will read:]

(1) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws or Section 79-11-101 et seq., then upon petition of a director, officer, delegate, member or

the Attorney General, the chancery court of the county where the corporation's principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates or directors be authorized in such a manner as the court finds fair and equitable under the circumstances.

(2) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws and Section 79-11-101 et seq., whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws or Section 79-11-101 et seq.

(4) Whenever practical any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided, however, that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger or sale of assets.

(5) Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and which complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the force and effect as if it complied with every requirement imposed by the articles, bylaws and Section 79-11-101 et seq.

SOURCES: Laws, 1987, ch. 485, § 16; brought forward and amended, Laws, 2012, ch. 382, § 55, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — In 2009, typographical errors in subsections (1), (2) (3) and (5) were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting "Section 79-11-101 et seq." for "Sections 79-11-101 et seq." The section as set out in the bound volume reflects these corrections, which were ratified by the Joint Committee at its July 22, 2010, meeting.

Amendment Notes — The 2012 amendment brought forward and amended the section by substituting "principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state" for "principal office (or, if none in this state, its registered office) is located" near the end of (1).

§ 79-11-133. Notice to Attorney General of commencement of certain proceedings.

Joint Legislative Committee Note — In 2009, typographical errors in subsections (1) and (2) were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects these corrections, which were ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-137. Contents of articles of incorporation.

[Effective until January 1, 2013, this section will read:]

(1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of Section 79-11-157;

(b) The period of duration, which may be perpetual;

(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office;

(d) The name and address of each incorporator;

(e) If the corporation is incorporated on or after January 1, 2012, the corporation's initial planned, primary nonprofit activity; and

(f) Any other information the Secretary of State may reasonably require by rule, including, without limitation, the contact name, electronic mail address, telephone number or business or mailing address of the corporation or that can be used to contact the corporation.

(2) The articles of incorporation may set forth:

(a) The names and addresses of the individuals who are to serve as the initial directors;

(b) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting and regulating the powers of the corporation, its board of directors and members;

(c) Any provision that under Section 79-11-101 et seq. is required or permitted to be set forth in the bylaws; and

(d) A provision permitting or making obligatory indemnification of a director for liability (as defined in Section 79-11-281(1)(c)) to any person for any action taken, or any failure to take any action as a director, except liability for:

(i) Receipt of a financial benefit to which the director is not entitled;

(ii) An intentional infliction of harm;

(iii) A violation of Section 79-11-270; or

(iv) An intentional violation of criminal law.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in Section 79-11-101 et seq.

(4) The liability of a director of a corporation that is not a charitable organization as defined in Section 79-11-501 may be eliminated or limited by a provision of the articles of incorporation that a director shall not be liable to the corporation or its members for money damages for any action taken or any failure to take any action as a director, except liability for:

- (a) The amount of a financial benefit received by the director to which the director is not entitled;
- (b) An intentional infliction of harm;
- (c) A violation of Section 79-11-270; or
- (d) An intentional violation of criminal law.

[Effective from and after January 1, 2013, this section will read:]

(1) The articles of incorporation must set forth:

- (a) A corporate name for the corporation that satisfies the requirements of Section 79-11-157;
- (b) The period of duration, which may be perpetual;
- (c) The information required by Section 79-35-5(a);
- (d) The name and address of each incorporator;
- (e) If the corporation is incorporated on or after January 1, 2012, the corporation's initial planned, primary nonprofit activity; and
- (f) Any other information the Secretary of State may reasonably require by rule, including, without limitation, the contact name, electronic mail address, telephone number or business or mailing address of the corporation or that can be used to contact the corporation.

(2) The articles of incorporation may set forth:

- (a) The names and addresses of the individuals who are to serve as the initial directors;
- (b) Provisions not inconsistent with law regarding:
 - (i) The purpose or purposes for which the corporation is organized;
 - (ii) Managing the business and regulating the affairs of the corporation;
 - (iii) Defining, limiting and regulating the powers of the corporation, its board of directors and members;
- (c) Any provision that under Section 79-11-101 et seq. is required or permitted to be set forth in the bylaws; and
- (d) A provision permitting or making obligatory indemnification of a director for liability (as defined in Section 79-11-281(1)(c)) to any person for any action taken, or any failure to take any action as a director, except liability for:
 - (i) Receipt of a financial benefit to which the director is not entitled;
 - (ii) An intentional infliction of harm;
 - (iii) A violation of Section 79-11-270; or
 - (iv) An intentional violation of criminal law.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in Section 79-11-101 et seq.

(4) The liability of a director of a corporation that is not a charitable organization as defined in Section 79-11-501 may be eliminated or limited by

a provision of the articles of incorporation that a director shall not be liable to the corporation or its members for money damages for any action taken or any failure to take any action as a director, except liability for:

- (a) The amount of a financial benefit received by the director to which the director is not entitled;
- (b) An intentional infliction of harm;
- (c) A violation of Section 79-11-270; or
- (d) An intentional violation of criminal law.

SOURCES: Laws, 1987, ch. 485, § 19; Laws, 2011, ch. 440, § 4; Laws, 2012, ch. 382, § 56, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — In 2009, typographical errors in subsections (2)(c) and (3) were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The corrections were ratified by the Joint Committee at its July 22, 2010, meeting.

Amendment Notes — The 2011 amendment, effective January 1, 2012, added (1)(e) and (f); added (2)(d); added (4); and made minor stylistic changes.

The 2012 amendment rewrote (1)(c)

Cross References — Articles of incorporation may provide for electronic annual or regular meetings, see § 79-11-197.

Articles of incorporation may provide for electronic special meetings, see § 79-11-199.

§ 79-11-141. Liability for purporting to act for corporation where incorporation has not occurred.

Joint Legislative Committee Note — In 2009, a typographical error in the section was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-143. Organizational meeting after incorporation; written consents in lieu of organizational meeting.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (2) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-149. Activities for which corporations may be organized.

Joint Legislative Committee Note — In 2009, a typographical error in the section was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume

reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-157. Corporate name.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (2) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting ‘Section 79-11-101 et seq.’ for ‘Sections 79-11-101 et seq.’ The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-161. Registration of foreign corporation’s corporate name; renewal of registration of corporate name; transfer of corporate name.

Editor’s Note — In 2009, a typographical error in subsection (5) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-163. Requirement that corporation maintain registered office and registered agent within state [Repealed effective January 1, 2013].

Each corporation must continuously maintain in this state:

- (a) A registered office that may be the same as its principal office; and
- (b) A registered agent, who may be:
 - (i) An individual who resides in this state and whose principal office is identical with the registered office;
 - (ii) A domestic corporation or domestic business corporation whose principal office is identical with the registered office;
 - (iii) A foreign corporation or foreign business corporation authorized to transact business or to conduct affairs in this state whose principal office is identical with the registered office; or
 - (iv) A resident agent designated prior to January 1, 1988.

SOURCES: Laws, 1987, ch. 485, § 32; Laws, 1988, ch. 417, § 3, eff from and after July 1, 1988.

Editor’s Note — Laws of 2012, ch. 382, § 130, effective January 1, 2013, provides: “SECTION 130. Section 79-11-163, Mississippi Code of 1972, which requires that a nonprofit corporation maintain a registered office and registered agent within the state, is repealed.”

§ 79-11-165. Change of registered office or registered agent of corporation [Repealed effective January 1, 2013].

(1) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change on a form prescribed by the Secretary of State and in a method prescribed by the Secretary of State that sets forth:

- (a) The name of the corporation;
- (b) The street address of its current registered office;
- (c) If the current registered office is to be changed, the street address of the new registered office;
- (d) The name of its current registered agent;
- (e) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
- (f) A representation that after the change or changes are made, the street addresses of its registered office and the principal office of its registered agent will be identical.

(2) If the street address of a registered agent's business office is changed, the registered agent may change the street address of the registered office of any corporation for which he is the registered agent by notifying the corporation in the form of a record of the change and signing and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

SOURCES: Laws, 1987, ch. 485, § 33; Laws, 2011, ch. 440, § 5, eff from and after Jan. 1, 2012.

Editor's Note — Laws of 2012, ch. 382, § 131, effective January 1, 2013, provides "SECTION 131. Section 79-11-165, Mississippi Code of 1972, which provides for a change of registered office or registered agent by a nonprofit corporation, is repealed."

Amendment Notes — The 2011 amendment, effective January 1, 2012, inserted "on a form prescribed by the Secretary of State and in a method prescribed by the Secretary of State" in (1); and in (2), substituted "If the street address of a registered agent's business office is changed, the registered agent may" for "If a registered agent changes the street address of his business office, he may" and substituted "the form of a record of the change and signing" for "writing of the change and signing (either manually or in facsimile)."

§ 79-11-167. Resignation of registered agent's agency [Repealed effective January 1, 2013].

SOURCES: Laws, 1987, ch. 485, § 34, eff from and after January 1, 1988.

Editor's Note — Laws of 2012, ch. 382, § 132, effective January 1, 2013, provides: "SECTION 132. Section 79-11-167, Mississippi Code of 1972, which provides for the resignation of a nonprofit corporation's registered agent, is repealed."

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-11-169. Registered agent as agent for service of process, notice, or demand; service upon secretary of corporation at principal office; when service perfected [Repealed effective January 1, 2013].

SOURCES: Laws, 1987, ch. 485, § 35, eff from and after January 1, 1988.

Editor's Note — Laws of 2012, ch. 382, § 133, effective January 1, 2013, provides: "SECTION 133. Section 79-11-169, Mississippi Code of 1972, which provides for service of process upon a nonprofit corporation, is repealed."

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-11-197. Annual membership meeting.

(1) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(2) Annual membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(3) At the annual meeting:

(a) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(b) The members shall consider and act upon such other matters as may be raised consistent with the requirements of Sections 79-11-205 and 79-11-219.

(4) The failure to hold an annual meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(5) The articles of incorporation or bylaws may provide that an annual or regular meeting of members does not need to be held at a geographic location if the meeting is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

SOURCES: Laws, 1987, ch. 485, § 49; Laws, 2011, ch. 440, § 6, eff from and after Jan. 1, 2012.

Amendment Notes — The 2011 amendment, effective January 1, 2012, added (5).

§ 79-11-199. Special meetings of members.

(1) A corporation with members shall hold a special meeting of members:

(a) On call of its board or the person or persons authorized to do so by the articles or bylaws; or

(b) If the holders of at least five percent (5%) of the voting power sign, date and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) The close of business on the thirtieth day before delivery of the demand for a special meeting to any corporate officer is the record date for the purpose of determining whether the five percent (5%) requirement of subsection (1) of this section has been met.

(3) If a notice for a special meeting demanded under subsection (1)(b) of this section is not given pursuant to Section 79-11-205 within thirty (30) days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (4) of this section, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to Section 79-11-205.

(4) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(5) Only those matters that are within the purpose or purposes described in the meeting notice required by Section 79-11-205 may be conducted at a special meeting of members.

(6) The articles of incorporation or bylaws may provide that a special meeting of members does not need to be held at a geographic location if the meeting is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

SOURCES: Laws, 1987, ch. 485, § 50; Laws, 2011, ch. 440, § 7, eff from and after Jan. 1, 2012.

Amendment Notes — The 2011 amendment, effective January 1, 2012, added (6).

§ 79-11-201. Court-ordered meeting of members.

[Effective until January 1, 2013, this section will read:]

(1) The chancery court of the county where a corporation's principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held:

(a) On application of any member or other person entitled to participate in the annual meeting, if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(b) On application of a member who signed a demand for a special meeting valid under Section 79-11-199, or a person or persons entitled to call a special meeting, if:

(i) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to a corporate officer; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) If the court orders a meeting, it may also order the corporation to pay the member's cost (including reasonable counsel fees) incurred to obtain the order.

[Effective from and after January 1, 2013, this section will read:]

(1) The chancery court of the county where a corporation's principal office is or will be located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, may summarily order a meeting to be held:

(a) On application of any member or other person entitled to participate in the annual meeting, if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(b) On application of a member who signed a demand for a special meeting valid under Section 79-11-199, or a person or persons entitled to call a special meeting, if:

(i) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to a corporate officer; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) If the court orders a meeting, it may also order the corporation to pay the member's cost (including reasonable counsel fees) incurred to obtain the order.

SOURCES: Laws, 1987, ch. 485, § 51; Laws, 2012, ch. 382, § 57, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “principal office is or will be located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, may summarily” for “principal office (or, if none in this state, its registered office) is located may summarily” in (1).

§ 79-11-203. Approval of action by members without holding meeting of members.

(1) Unless limited or prohibited by the articles or bylaws, action required or permitted by Section 79-11-101 et seq. to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least eighty percent (80%) of the voting power. The action must be evidenced by one or more consents in the form of a record bearing the date of signature and describing the action taken, signed by those members representing at least eighty percent (80%) of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under Section 79-11-201 or 79-11-209, the record date for determining members entitled to take action without a meeting is the date the first member signed the consent under subsection (1) of this section.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the Secretary of State.

(4) Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten (10) days after such written notice is given.

SOURCES: Laws, 1987, ch. 485, § 52; Laws, 2011, ch. 440, § 8, eff from and after Jan. 1, 2012.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (1) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The correction was ratified by the Joint Committee at its July 22, 2010, meeting.

Amendment Notes — The 2011 amendment, effective January 1, 2012, inserted “in the form of a record bearing the date of signature and” following “The action must be evidenced by one or more consents” in the second sentence in (1).

§ 79-11-207. Waiver of notice requirements by member.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (1) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-211. Corporate action taken by ballot without meeting.

(1) Except as provided in subsection (5) of this section and unless prohibited or limited by the articles or bylaws, any action which may be taken at any annual or special meeting of members may be taken without a meeting

if the corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A ballot shall:

- (a) Be in the form of a record;
- (b) Set forth each proposed action; and
- (c) Provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot shall:

- (a) Indicate the number of responses needed to meet the quorum requirements;
- (b) State the percentage of approvals necessary to approve each matter other than election of directors; and
- (c) Specify the time by which a ballot must be received by the corporation in order to be counted.

(5) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

SOURCES: Laws, 1987, ch. 485, § 56; Laws, 2011, ch. 440, § 9, eff from and after Jan. 1, 2012.

Amendment Notes — The 2011 amendment, effective January 1, 2012, deleted “written” preceding “ballot shall” in (2); and redesignated former (2)(a) and (b) as (2)(b) and (c).

§ 79-11-213. Preparation of list of members entitled to notice of meeting and members entitled to vote at meeting; list to be open for inspection; court may order inspection and copying of lists.

[Effective until January 1, 2013, this section will read:]

(1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(2) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation’s

principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or attorney is entitled on written demand to inspect and, subject to the limitations of Sections 79-11-285(c) and 79-11-291, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (2) of this section); the chancery court of the county where a corporation's principal office (or if none in this state, its registered office) is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) of this section prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

[Effective from and after January 1, 2013, this section will read:]

(1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(2) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or attorney is entitled on written demand to inspect and, subject to the limitations of Sections 79-11-285(c) and 79-11-291, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or attorney to inspect the list of members before or at the meeting (or copy the list

as permitted by subsection (2) of this section); the chancery court of the county where a corporation's principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) of this section prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

SOURCES: Laws, 1987, ch. 485, § 57; Laws, 2012, ch. 382, § 58, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, on application of the member, may summarily” for “principal office (or if none in this state, its registered office) is located, on application of the member, may summarily” in (4).

§ 79-11-217. Quorum requirements.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (1) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-219. Votes required for member action.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (1) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-221. Voting by proxy.

(1) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact in the form of a record.

(2) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless a different period is expressly provided in the

appointment form; provided, however, that no proxy shall be valid for more than three (3) years from its date of execution.

(3) An appointment of a proxy is revocable by the member.

(4) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(5) Appointment of a proxy is revoked by the person appointing the proxy:

(a) Attending any meeting and voting in person; or

(b) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing in the form of a record stating that the appointment of the proxy is revoked or a subsequent appointment form.

(6) Subject to Section 79-11-227 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

SOURCES: Laws, 1987, ch. 485, § 61; Laws, 2011, ch. 440, § 10, eff from and after Jan. 1, 2012.

Amendment Notes — The 2011 amendment, effective January 1, 2012, inserted "in the form of a record" at the end of (1) and in (5)(b).

§ 79-11-231. Board of directors; persons authorized to exercise some or all of powers of board.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (2) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting "Section 79-11-101 et seq." for "Sections 79-11-101 et seq." The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-235. Number of directors.

(1)(a) Except as provided in paragraph (b) of this subsection, the number of directors shall be specified in or fixed in accordance with the articles or bylaws.

(b) If the corporation: (i) is a charitable organization as defined in Section 79-11-501; (ii) which solicits contributions or intends to solicit contributions in the state by any means whatsoever; and (iii) is incorporated on or after January 1, 2012, the board must consist of not less than three (3) directors, with the number of directors specified in or fixed in accordance with the articles or bylaws.

(2) The number of directors may be increased or decreased in conformance with law from time to time by amendment to or in the manner prescribed in the articles or bylaws.

SOURCES: Laws, 1987, ch. 485, § 68; Laws, 2011, ch. 440, § 11, eff from and after Jan. 1, 2012.

Amendment Notes — The 2011 amendment, effective January 1, 2012, added “Except as provided in paragraph (b) of this subsection” at the beginning of (1)(a); added (1)(b); inserted “in conformance with law” following “The number of directors may be increased or decreased” in (2).

§ 79-11-257. Action taken by board of directors without meeting.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (1) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-261. Waiver of notice of meeting of board of directors.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (1) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-263. Quorum of board of directors; director present at meeting deemed to have assented to action taken; exceptions.

Joint Legislative Committee Note — In 2009, typographical errors in subsections (1) and (2) were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-267. Director to act in best interests of corporation; director’s reliance upon others for information; liability of directors.

(1) A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith belief that he is acting in the best interests of the corporation.

(2) Unless he has knowledge or information concerning the matter in question that makes reliance unwarranted, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he is not a member if the director believes, in good faith, that the committee merits confidence.

(3) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

(4) A person alleging a violation of this section has the burden of proving the violation.

(5) Notwithstanding any other provision of this section, a director of a corporation that is a charitable organization as defined in Section 79-11-501 shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(a) The amount of a financial benefit received by the director to which the director is not entitled;

(b) An intentional infliction of harm;

(c) A violation of Section 79-11-270; or

(d) An intentional violation of criminal law.

SOURCES: Laws, 1987, ch. 485, § 84; Laws, 2011, ch. 440, § 12, eff from and after Jan. 1, 2012.

Amendment Notes — The 2011 amendment, effective January 1, 2012, added (5).

§ 79-11-269. Conflict of interest transaction.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (4) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting "Section 79-11-101 et seq." for "Sections 79-11-101 et seq." The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-270. Liability of director for unlawful distribution.

Joint Legislative Committee Note — In 2009, typographical errors in subsections (1) and (2)(b) were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting "Section 79-11-101 et seq." for "Sections 79-11-101 et seq." The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-281. Indemnification of director, officer, employee, or agent.

Joint Legislative Committee Note — In 2009, typographical errors in subsections (5)(c) and (8)(b) were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-283. Recordkeeping requirements.

(1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by Section 79-11-265.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class showing the number of votes each member is entitled to vote.

(4) A corporation shall maintain its records in written form or in any other form of a record.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;

(d) The minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(e) All written communications to members generally within the past three (3) years;

(f) A list of the names and business or home addresses of its current directors and officers; and

(g) Its most recent status report delivered to the Secretary of State under Section 79-11-391.

SOURCES: Laws, 1987, ch. 485, § 92; Laws, 2011, ch. 440, § 13, eff from and after Jan. 1, 2012.

Amendment Notes — The 2011 amendment, effective January 1, 2012, substituted “any other form of a record” for “another form capable of conversion into written form within a reasonable time” at the end of (4).

§ 79-11-285. Members' right to inspect and copy corporation records; requirements.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (4)(b) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting "Section 79-11-101 et seq." for "Sections 79-11-101 et seq." The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-287. Conditions on right to inspect; member's agent or attorney has right to inspect and copy records; means of copying records; charges for copying documents by corporation; lists which satisfy demand for record of members.

(1) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(2) The right to copy records under Section 79-11-285 includes, if reasonable, the right to receive copies. Copies may be provided through an electronic transmission if available and so requested by the member.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a member's demand to inspect the record of members under Section 79-11-285(2)(c) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

SOURCES: Laws, 1987, ch. 485, § 94; Laws, 2011, ch. 440, § 14, eff from and after Jan. 1, 2012.

Amendment Notes — The 2011 amendment, effective January 1, 2012, deleted "made by photographic, xerographic or other means" at the end of the first sentence and added the second sentence in (2).

§ 79-11-289. Court-ordered inspection where corporation does not allow member to inspect and copy records.

[Effective until January 1, 2013, this section will read:]

(1) If a corporation does not allow a member who complies with Section 79-11-285(1) to inspect and copy any records required by that subsection to be available for inspection, the chancery court in the county where the corporation's principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(2) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with Section

79-11-285(2) and (3) may apply to the chancery court in the county where the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs (including reasonable attorney's fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

[Effective from and after January 1, 2013, this section will read:]

(1) If a corporation does not allow a member who complies with Section 79-11-285(1) to inspect and copy any records required by that subsection to be available for inspection, the chancery court in the county where the corporation's principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(2) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with Section 79-11-285(2) and (3) may apply to the chancery court in the county where the corporation's principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs (including reasonable attorney's fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

SOURCES: Laws, 1987, ch. 485, § 95; Laws, 2012, ch. 382, § 59, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted "principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state" for "principal office (or, if none in this state, its registered office) is located" in (1) and (2).

§ 79-11-293. Authorization for making distributions; conditions for corporation to purchase memberships.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (3) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-295. Authorization to amend articles of incorporation.

Joint Legislative Committee Note — In 2009, a typographical error in the section was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-299. Amendments to articles of incorporation which may be adopted by board of directors without action by members.

[Effective until January 1, 2013, this section will read:]

Unless the articles of incorporation provide otherwise, a corporation’s board of directors may adopt one or more amendments to the corporation’s articles of incorporation without action by members:

- (a) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
- (b) To delete the names and addresses of the initial directors;
- (c) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;
- (d) To make any other change expressly permitted by Section 79-11-101 et seq. to be made without member action.

[Effective from and after January 1, 2013, this section will read:]

Unless the articles of incorporation provide otherwise, a corporation’s board of directors may adopt one or more amendments to the corporation’s articles of incorporation without action by members:

- (a) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
- (b) To delete the names and addresses of the initial directors;
- (c) To change the information required by Section 79-35-5(a);
- (d) To make any other change expressly permitted by Section 79-11-101 et seq. to be made without member action.

SOURCES: Laws, 1987, ch. 485, § 100; Laws, 2012, ch. 382, § 60, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — In 2009, a typographical error in paragraph (d) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

Amendment Notes — The 2012 amendment rewrote (c).

§ 79-11-301. Procedures for making amendments to articles of incorporation.

Joint Legislative Committee Note — In 2009, a typographical error in paragraph (a) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-315. Approval of amendments to bylaws where corporation has members.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (1) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-321. Approval of plan of merger; abandonment of plan of merger.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (1) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-327. Merger of foreign corporation with domestic corporation.

[Effective until January 1, 2013, this section will read:]

(1) One or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(a) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) The foreign corporation complies with Section 79-11-323 if it is the surviving corporation of the merger; and

(c) Each domestic nonprofit corporation complies with the applicable provisions of Sections 79-11-319 and 79-11-321 and, if it is the surviving corporation of the merger, with Section 79-11-323.

(2) Upon the merger taking effect, the surviving foreign business or nonprofit corporation is deemed to have irrevocably appointed the Secretary of State as its agent for service of process in any proceeding brought against it.

[Effective from and after January 1, 2013, this section will read:]

(1) One or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(a) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) The foreign corporation complies with Section 79-11-323 if it is the surviving corporation of the merger; and

(c) Each domestic nonprofit corporation complies with the applicable provisions of Sections 79-11-319 and 79-11-321 and, if it is the surviving corporation of the merger, with Section 79-11-323.

(2) Upon the merger taking effect, the surviving foreign business or nonprofit corporation may be served with process in any proceeding brought against it as provided in the Mississippi Rules of Civil Procedure.

SOURCES: Laws, 1987, ch. 485, § 114; Laws, 2012, ch. 382, § 61, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, substituted “nonprofit corporation may be served with process in any proceeding brought against it as provided in the Mississippi Rules of Civil Procedure” for “nonprofit corporation is deemed to have irrevocably appointed the Secretary of State as its agent for service of process in any proceeding brought against it” in (2).

§ 79-11-331. Sale, lease, exchange, or other disposition of property not in regular course of business.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (2) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-335. Approval of dissolution by board of directors or members; notice requirements.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (1) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section

79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-345. Notice of dissolution and request for presentation of claims against corporation; statute of limitations; enforcement of claims.

[Effective until January 1, 2013, this section will read:]

(1) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice must:

(a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation’s principal office (or, if none in this state, its registered office) is or was last located;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two (2) years after publication of this notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two (2) years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under Section 79-11-343;

(b) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved corporation, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee’s pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee’s total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

[Effective from and after January 1, 2013, this section will read:]

(1) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice must:

(a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was located, or in Hinds County if the corporation does not have a principal office in this state;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two (2) years after publication of this notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two (2) years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under Section 79-11-343;

(b) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved corporation, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

SOURCES: Laws, 1987, ch. 485, § 123; Laws, 2012, ch. 382, § 62, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment in (2)(a), substituted “is or was located, or in Hinds County if the corporation does not have a principal office in this state” for “(or, if none in this state, its registered office) is or was last located” at the end.

§ 79-11-347. Administrative dissolution by Secretary of State, grounds for.

[Effective until January 1, 2013, this section will read:]

The Secretary of State may commence a proceeding under Section 79-11-349 to administratively dissolve a corporation if:

(a) The corporation does not pay within sixty (60) days after they are due any taxes or penalties imposed by Section 79-11-101 et seq. or other law;

(b) The corporation does not deliver a requested status report to the Secretary of State within sixty (60) days after it is due;

(c) The corporation is without a registered agent or registered office in this state for sixty (60) days or more;

(d) The corporation does not notify the Secretary of State within one hundred twenty (120) days that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued;

(e) The corporation's period of duration, if any, stated in its articles of incorporation expires; or

(f) The corporation fails to report within the time period specified in Section 79-11-405 the suspension or revocation of its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

[Effective from and after January 1, 2013, this section will read:]

The Secretary of State may commence a proceeding under Section 79-11-349 to administratively dissolve a corporation if:

(a) The corporation does not pay within sixty (60) days after they are due any taxes or penalties imposed by Section 79-11-101 et seq. or other law;

(b) The corporation does not deliver a requested status report to the Secretary of State within sixty (60) days after it is due;

(c) The corporation is without a registered agent in this state for sixty (60) days or more;

(d) The corporation does not notify the Secretary of State within one hundred twenty (120) days that its registered agent has been changed or that its registered agent has resigned;

(e) The corporation's period of duration, if any, stated in its articles of incorporation expires;

(f) The corporation fails to report within the time period specified in Section 79-11-405 the suspension or revocation of its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code; or

(g) An incorporator, director, officer or agent of the corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing.

SOURCES: Laws, 1987, ch. 485, § 124; Laws, 2011, ch. 440, § 15; Laws, 2012, ch. 382, § 63, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — In 2009, a typographical error in paragraph (a) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting "Section 79-11-101 et seq." for "Sections 79-11-101 et seq." The correction was ratified by the Joint Committee at its July 22, 2010, meeting.

Amendment Notes — The 2011 amendment, effective January 1, 2012, added (f) and made related changes.

The 2012 amendment deleted "or registered office" following "registered agent" in (c) and (d); deleted "or that its registered office has been discontinued" from the end of (d); added (g); and made minor stylistic changes.

Federal Aspects — Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

§ 79-11-349. Administrative dissolution, procedures.

[Effective until January 1, 2013, this section will read:]

(1) Upon determining that one or more grounds exist under Section 79-11-347 for dissolving a corporation, the Secretary of State shall notify the corporation in the form of a record of that determination. For purpose of this section, notice may be made by publication by newspaper of general circulation in the area of the corporation's last-known location.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within at least sixty (60) days after service of the notice is perfected, the Secretary of State may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation if the corporation has filed a valid address or registered agent with the Secretary of State within the previous calendar year.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under Section 79-11-341 and notify its claimants under Sections 79-11-343 and 79-11-345.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

[Effective from and after January 1, 2013, this section will read:]

(1) Upon determining that one or more grounds exist under Section 79-11-347 for dissolving a corporation, the Secretary of State shall notify the corporation in the form of a record of that determination.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within at least sixty (60) days after service of the notice is perfected, the Secretary of State may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under Section 79-11-341 and notify its claimants under Sections 79-11-343 and 79-11-345.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

SOURCES: Laws, 1987, ch. 485, § 125; Laws, 2011, ch. 440, § 16; Laws, 2012, ch. 382, § 64, eff from and after Jan. 1, 2013.

Amendment Notes — The 2011 amendment, effective January 1, 2012, in (1), substituted “notify the corporation in form of a record of that determination” for “serve the corporation with written notice of that determination under Section 79-11-169” at the end of the first sentence, and added the last sentence; in (2), deleted “under Section 79-11-169” following “service of the notice is perfected” in the first sentence and rewrote the last sentence.

The 2012 amendment deleted “For purpose of this section, notice may be made by publication by newspaper of general circulation in the area of the corporation’s last-known location” from the end of (1); deleted “if the corporation has filed a valid address or registered agent with the Secretary of State within the previous calendar year” from the end of (2).

§ 79-11-351. Reinstatement after administrative dissolution.

[Effective until January 1, 2013, this section will read:]

(1) A corporation administratively dissolved under Section 79-11-349 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must:

(a) Recite the name of the corporation and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(c) State that the corporation’s name satisfies the requirements of Section 79-11-157; and

(d) Contain a certificate from the State Tax Commission reciting that all taxes owed by the corporation have been paid.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation under Section 79-11-169.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

[Effective from and after January 1, 2013, this section will read:]

(1) A corporation administratively dissolved under Section 79-11-349 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must:

(a) Recite the name of the corporation and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(c) State that the corporation's name satisfies the requirements of Section 79-11-157; and

(d) Contain a certificate from the Department of Revenue reciting that all taxes owed by the corporation have been paid.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

SOURCES: Laws, 1987, ch. 485, § 126; Laws, 1993, ch. 368, § 15; Laws, 2009, ch. 527, § 5; Laws, 2012, ch. 382, § 65, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment substituted “Department of Revenue” for “State Tax Commission” in (1)(d); and deleted “under Section 79-11-169” at the end of (2).

§ 79-11-353. Denial of application for reinstatement following administrative dissolution; appeals.

[Effective until January 1, 2013, this section will read:]

(1) The Secretary of State, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation under Section 79-11-169 with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the chancery court of the county where the corporation's principal office (or, if none in this state, its registered office) is located within ninety (90) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

[Effective from and after January 1, 2013, this section will read:]

(1) The Secretary of State, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the chancery court of the county where the corporation's principal office is or was

located, or in the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, within ninety (90) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 1987, ch. 485, § 127; Laws, 2012, ch. 382, § 66, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment deleted “under Section 79-11-169” preceding “with a written notice that explains” near the end of (1); and rewrote the first sentence in (2).

§ 79-11-355. Dissolution by court order; parties who may bring action; grounds for court-ordered dissolution.

[Effective until January 1, 2013, this section will read:]

(1) The chancery court of the county where the corporation's principal office (or, if none in this state, its registered office) is located may dissolve a corporation:

(a) In a proceeding by the Attorney General or the Secretary of State if it is established that:

(i) The corporation obtained its articles of incorporation through fraud;

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law; or

(iii) If the corporation is a charitable organization, as defined in Section 79-11-501, that:

1. The corporate assets are being misapplied or wasted;

2. The corporation is unable to carry out its purpose(s); or

3. The corporation has violated the laws regulating the solicitation of charitable contributions, Section 79-11-501 et seq.

(b) In a proceeding by fifty (50) members or members holding five percent (5%) of the voting power, whichever is less, or by a director if it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to breach the deadlock;

(ii) The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;

(iii) The members are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates,

to elect successors to directors whose terms have, or would otherwise have, expired; or

(iv) The corporate assets are being misapplied or wasted;

(c) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(2) Prior to dissolving a corporation, the court shall consider whether there are reasonable alternatives to dissolution.

[Effective from and after January 1, 2013, this section will read:]

(1) The chancery court of the county where the corporation's principal office is or was located, or in the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, may dissolve a corporation:

(a) In a proceeding by the Attorney General or the Secretary of State if it is established that:

(i) The corporation obtained its articles of incorporation through fraud;

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law; or

(iii) If the corporation is a charitable organization, as defined in Section 79-11-501, that:

1. The corporate assets are being misapplied or wasted;

2. The corporation is unable to carry out its purpose(s); or

3. The corporation has violated the laws regulating the solicitation of charitable contributions, Section 79-11-501 et seq.;

(b) In a proceeding by fifty (50) members or members holding five percent (5%) of the voting power, whichever is less, or by a director if it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to breach the deadlock;

(ii) The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;

(iii) The members are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired; or

(iv) The corporate assets are being misapplied or wasted;

(c) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(2) Prior to dissolving a corporation, the court shall consider whether there are reasonable alternatives to dissolution.

SOURCES: Laws, 1987, ch. 485, § 128; Laws, 2009, ch. 547, § 3; Laws, 2012, ch. 382, § 67, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote (1).

§ 79-11-357. Court-ordered dissolution, venue; appropriate party defendants; authority of court with respect to.

[Effective until January 1, 2013, this section will read:]

(1) Venue for a proceeding to dissolve a corporation lies in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located.

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located and carry on the activities of the corporation until a full hearing can be held.

[Effective from and after January 1, 2013, this section will read:]

(1) Venue for a proceeding to dissolve a corporation lies in the county where a corporation's principal office is or was located, or in the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state.

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located and carry on the activities of the corporation until a full hearing can be held.

SOURCES: Laws, 1987, ch. 485, § 129; Laws, 2012, ch. 382, § 68, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote (1).

§ 79-11-367. Foreign corporation, application for certificate of authority.

[Effective until January 1, 2013, this section will read:]

(1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State. The application must set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of Section 79-11-373;

(b) The name of the state or country under whose law it is incorporated;

(c) The date of incorporation and period of duration;

(d) The street address of its principal office;

(e) The address of its registered office in this state and the name of its registered agent at that office;

(f) The names and usual business or home addresses of its current directors and officers; and

(g) Whether the foreign corporation has members.

(2) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import), dated not more than sixty (60) days prior to the date the application is filed in this state, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

[Effective from and after January 1, 2013, this section will read:]

(1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State. The application must set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of Section 79-11-373;

(b) The name of the state or country under whose law it is incorporated;

(c) The date of incorporation and period of duration;

(d) The street address of its principal office;

(e) The information required under Section 79-35-5(a);

(f) The names and usual business or home addresses of its current directors and officers; and

(g) Whether the foreign corporation has members.

(2) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import), dated not more than sixty (60) days prior to the date the application is filed in this state, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

SOURCES: Laws, 1987, ch. 485, § 134; Laws, 2012, ch. 382, § 69, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote (1)(e), which read “The street address of its principal office.”

§ 79-11-369. Foreign corporation, amended certificate of authority.

[Effective until January 1, 2013, this section will read:]

(1) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

- (a) Its corporate name;
- (b) The period of its duration; or
- (c) The state or country of its incorporation.

(2) The requirements of Section 79-11-367 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

[Effective from and after January 1, 2013, this section will read:]

(1) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

- (a) Its corporate name;
- (b) The period of its duration;
- (c) Any information required by Section 79-35-5(a); or
- (d) The state or country or its incorporation.

(2) The requirements of Section 79-11-367 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

SOURCES: Laws, 1987, ch. 485, § 135; Laws, 2012, ch. 382, § 70, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment added (1)(c).

§ 79-11-371. Effect of certificate of authority.

Joint Legislative Committee Note — In 2009, typographical errors in subsections (1), (2) and (3) were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects these corrections, which were ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-375. Registered office and registered agent of foreign corporation [Repealed effective January 1, 2013].

SOURCES: Laws, 1987, ch. 485, § 138; Laws, 1988, ch. 417, § 7, eff from and after July 1, 1988.

Editor's Note — Laws of 2012, ch. 382, § 134, effective January 1, 2013, provides: "SECTION 134. Section 79-11-375, Mississippi Code of 1972, which requires that a foreign nonprofit corporation maintain a registered office and registered agent within the state, is repealed."

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-11-377. Change of registered office or registered agent of foreign corporation [Repealed effective January 1, 2013].

(1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change on a form prescribed by the Secretary of State and in a method prescribed by the Secretary of State that sets forth:

- (a) Its name;
- (b) The street address of its current registered office;
- (c) If the current registered office is to be changed, the street address of its new registered office;
- (d) The name of its current registered agent;
- (e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
- (f) A representation that after the change or changes are made, the street address of its registered office and the office of its registered agent will be identical.

(2) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by delivering notice to the corporation in the form of a record of the change and signing and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

SOURCES: Laws, 1987, ch. 485, § 139; Laws, 2011, ch. 440, § 17, eff from and after Jan. 1, 2012.

Editor's Note — Laws of 2012, ch. 382, § 135, effective January 1, 2013, provides: "SECTION 135. Section 79-11-377, Mississippi Code of 1972, which provides for a change of registered office or registered agent by a foreign nonprofit corporation, is repealed."

Amendment Notes — The 2011 amendment, effective January 1, 2012, inserted "on a form prescribed by the Secretary of State and in a method prescribed by the Secretary of State" preceding "that sets forth" at the end of (1); in (2), substituted "delivering notice to" for "notifying", "the form of a record" for "writing", and deleting "(either manually or in facsimile)" following "change and signing."

§ 79-11-379. Resignation of registered agent of foreign corporation [Repealed effective January 1, 2013].

SOURCES: Laws, 1987, ch. 485, § 140, eff from and after January 1, 1988.

Editor's Note — Laws of 2012, ch. 382, § 136, effective January 1, 2013, provides: "SECTION 136. Section 79-11-379, Mississippi Code of 1972, which provides for the resignation of a foreign nonprofit corporation's registered agent, is repealed."

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-11-381. Service of process, demand or notice on foreign corporation.

[Effective until January 1, 2013, this section will read:]

(1) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent status report filed under Section 79-11-391 if the foreign corporation:

(a) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(b) Has withdrawn from transacting business in this state under Section 79-11-383; or

(c) Has had its certificate of authority revoked under Section 79-11-387.

(3) Service is perfected under subsection (2) of this section at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(c) Five (5) days after its deposit in the United States mail, as evidenced by the postmark if mailed postpaid and correctly addressed.

(4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

[Effective from and after January 1, 2013, this section will read:]

Notice or demand required or permitted by law on a foreign corporation authorized to transact business in this state is governed by Section 79-35-13. Service of process is governed by the Mississippi Rules of Civil Procedure.

SOURCES: Laws, 1987, ch. 485, § 141; Laws, 2012, ch. 382, § 71, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote the section.

§ 79-11-383. Withdrawal of foreign corporation.

[Effective until January 1, 2013, this section will read:]

(1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) A representation that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) A representation that it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state;

(d) A mailing address to which the Secretary of State may mail a copy of any process served on him or her under paragraph (c) of this subsection; and

(e) A commitment to notify the Secretary of State in the future of any change in the mailing address.

(3) After the withdrawal of the corporation is effective, service of process on the Secretary of State under this section is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the post-office address set forth in its application for withdrawal.

[Effective from and after January 1, 2013, this section will read:]

(1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) A representation that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) A representation that it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state;

(d) A mailing address to which the Secretary of State may mail a copy of any process served on him or her under paragraph (c) of this subsection; and

(e) A commitment to notify the Secretary of State in the future of any change in the mailing address.

(3) After the withdrawal of the corporation is effective, service of process on the Secretary of State under the Mississippi Rules of Civil Procedure is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the address set forth in its application for withdrawal.

SOURCES: Laws, 1987, ch. 485, § 142; Laws, 2012, ch. 382, § 72, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment in (3), substituted “the Mississippi Rules of Civil Procedure” for “this section” and deleted “post-office” preceding “address set forth” near the end.

§ 79-11-385. Revocation of certificate of authority of foreign corporation, grounds.

[Effective until January 1, 2013, this section will read:]

(1) The Secretary of State may commence a proceeding under Section 79-11-387 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) The foreign corporation does not deliver the status report to the Secretary of State within sixty (60) days after it is due;

(b) The foreign corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Section 79-11-101 et seq. or other law;

(c) The foreign corporation is without a registered agent or registered office in this state for sixty (60) days or more;

(d) The foreign corporation does not inform the Secretary of State under Section 79-11-377 or 79-11-379 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within ninety (90) days of the change, resignation or discontinuance;

(e) An incorporator, director, officer or agent of the foreign corporation signed a document such person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or

(f) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger.

(2) The Attorney General may commence a proceeding under Section 79-11-387 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if the corporation has continued to exceed or abuse the authority conferred upon it by law.

[Effective from and after January 1, 2013, this section will read:]

(1) The Secretary of State may commence a proceeding under Section 79-11-387 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) The foreign corporation does not deliver the status report to the Secretary of State within sixty (60) days after it is due;

(b) The foreign corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Section 79-11-101 et seq. or other law;

(c) The foreign corporation is without a registered agent in this state for sixty (60) days or more;

(d) The foreign corporation does not inform the Secretary of State by an appropriate filing that its registered agent has changed or that its registered agent has resigned within ninety (90) days of the change or resignation;

(e) An incorporator, director, officer or agent of the foreign corporation signed a document such person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or

(f) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger.

(2) The Attorney General may commence a proceeding under Section 79-11-387 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if the corporation has continued to exceed or abuse the authority conferred upon it by law.

SOURCES: Laws, 1987, ch. 485, § 143; Laws, 2012, ch. 382, § 73, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (1)(b) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

Amendment Notes — The 2012 amendment deleted “a registered office” following “a registered agent” in (1)(c); and rewrote (1)(d).

§ 79-11-389. Appeal of revocation.

[Effective until January 1, 2013, this section will read:]

(1) A foreign corporation may appeal the Secretary of State’s revocation of its certificate of authority to the chancery court of the county in which its registered office in this state is located within thirty (30) days after the service of the certificate of revocation is perfected under Section 79-11-381. The foreign corporation applies by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State’s certificate of revocation.

(2) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court’s final decision may be appealed as in other civil proceedings.

[Effective from and after January 1, 2013, this section will read:]

(1) A foreign corporation may appeal the Secretary of State’s revocation of its certificate of authority to the Chancery Court of the First Judicial District

of Hinds County, Mississippi, or the chancery court of the county where the corporation's principal office is located within thirty (30) days after the service of the certificate of revocation is perfected under Section 79-11-381. The foreign corporation applies by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.

(2) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 1987, ch. 485, § 145; Laws, 2012, ch. 382, § 74, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote the first sentence in (1).

§ 79-11-391. Status report of corporation.

[Effective until January 1, 2013, this section will read:]

(1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall upon request deliver to the Secretary of State a status report on a form prescribed and furnished by the Secretary of State that sets forth:

(a) The name of the corporation and the state or country under whose law it is incorporated;

(b) The address of its registered office and the name of its registered agent at the office in this state or the address and name of the person designated as its resident agent prior to January 1, 1988;

(c) The address of its principal office;

(d) The names and business or residence addresses of its directors and principal officers;

(e) A brief description of the nature of its activities; and

(f) Whether or not it has members.

(2) Upon receiving the request for a status report, a domestic or foreign corporation shall have ninety (90) days to deliver the report to the Secretary of State.

(3) The information in the status report must be current on the date the status report is executed on behalf of the corporation.

(4) The Secretary of State may request a status report from time to time, but not more frequently than once every five (5) years, beginning five (5) years from the date upon which a domestic corporation was incorporated or a foreign corporation was authorized to transact business.

(5) If a status report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and

delivered to the Secretary of State within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

[Effective from and after January 1, 2013, this section will read:]

(1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall upon request deliver to the Secretary of State a status report on a form prescribed and furnished by the Secretary of State that sets forth:

- (a) The name of the corporation and the jurisdiction under whose law it is incorporated;
- (b) The information required by Section 79-35-5(a);
- (c) The address of its principal office;
- (d) The names and business or residence addresses of its directors and principal officers;
- (e) A brief description of the nature of its activities; and
- (f) Whether or not it has members.

(2) Upon receiving the request for a status report, a domestic or foreign corporation shall have ninety (90) days to deliver the report to the Secretary of State.

(3) The information in the status report must be current on the date the status report is executed on behalf of the corporation.

(4) The Secretary of State may request a status report from time to time, but not more frequently than once every five (5) years, beginning five (5) years from the date upon which a domestic corporation was incorporated or a foreign corporation was authorized to transact business.

(5) If a status report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

SOURCES: Laws, 1987, ch. 485, § 146; Laws, 1988, ch. 417, § 8; Laws, 2012, ch. 382, § 75, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment substituted “jurisdiction” for “state or country” in (1)(a); and rewrote (1)(b).

§ 79-11-393. Rural water companies, special requirements.

Joint Legislative Committee Note — In 2009, a typographical error in the introductory language was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-395. Application to pre-existing domestic nonprofit, nonshare corporations.

Joint Legislative Committee Note — In 2009, a typographical error in the section was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-397. Application to pre-existing foreign corporations authorized to transact business.

Joint Legislative Committee Note — In 2009, typographical errors in subsections (1) and (2) were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-399. Effect of repeal of prior statutes.

(1) Except as provided in subsection (2) of this section, the repeal of a statute by Section 79-11-101 et seq. does not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;

(c) Any violation of the statute or any penalty, forfeiture or punishment incurred because of the violation before its repeal;

(d) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed; or

(e) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(2) If a penalty or punishment imposed for violation of a statute repealed by Section 79-11-101 et seq. is reduced by Section 79-11-101 et seq., the penalty or punishment, if not already imposed, shall be imposed in accordance with Section 79-11-101 et seq.

(3) This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USC Section 7001 et seq., but this chapter does not modify, limit, or supersede Section 101(c) of that act or authorize electronic delivery of any of the notices described in Section 103(b) of that act.

SOURCES: Laws, 1987, ch. 485, § 150; Laws, 2011, ch. 440, § 18, eff from and after Jan. 1, 2012.

Joint Legislative Committee Note — In 2009, typographical errors in subsections (1) and (2) were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The correction was ratified by the Joint Committee at its July 22, 2010, meeting.

Amendment Notes — The 2011 amendment, effective January 1, 2012, added (3).

Federal Aspects — Sections 101(c) and 103(b) of the federal Electronic Signature in Global and National Commerce Act, see 15 USCS §§ 7001(c) and 7003(b), respectively.

§ 79-11-401. Application to religious corporations.

Joint Legislative Committee Note — In 2009, a typographical error in the section was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-403. Certain provisions inapplicable to religious corporations; religious doctrine controlling in case of inconsistencies.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (2) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “Section 79-11-101 et seq.” for “Sections 79-11-101 et seq.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-405. Nonprofit corporation to notify Secretary of State of determination, suspension or revocation of exemption from tax as Section 501(c)(3) organization .

(1) A nonprofit corporation granted a determination of exemption from tax as an organization described in Section 501(c)(3) of the Internal Revenue Code shall notify the Secretary of State, in the form and manner prescribed by the Secretary of State, within thirty (30) calendar days of the determination of exemption.

(2) If a nonprofit corporation's exemption from tax as an organization described in Section 501(c)(3) of the Internal Revenue Code is suspended or revoked, the nonprofit corporation shall notify the Secretary of State of the suspension or revocation, in the form and manner prescribed by the Secretary of State, within thirty (30) calendar days of the suspension or revocation.

SOURCES: Laws, 2011, ch. 440, § 19, eff from and after Jan. 1, 2012.

Federal Aspects — Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

REGULATION OF CHARITABLE SOLICITATIONS

§ 79-11-501. Definitions.

Cross References — Requirement that board of charitable organization defined in this section, incorporated on or after January 1, 2012, and soliciting contributions in Mississippi, consist of not less than three directors, see § 79-11-235.

§ 79-11-509. Effective date of registration; denial, suspension or revocation of registration or exemption; grounds for denial, suspension or revocation; procedure; violations and penalties.

Joint Legislative Committee Note — In 2009, an error in a statutory reference in subsection (4)(d) was corrected at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication by substituting “paragraph (b) or (c) of this subsection” for “paragraph (b) or (c) of this section.” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-11-519. Powers and duties of district attorneys and county prosecuting attorneys; violations of Sections 79-11-501 through 79-11-529.

Joint Legislative Committee Note — In 2009, typographical errors in subsection (6) were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “(b) To use a name...” for “(b) Using a name...,” “(c) To represent or imply...” for “(c) Representing or implying...” and “(d) To solicit...” for “(d) Soliciting...” The section as set out in the bound volume reflects these corrections, which were ratified by the Joint Committee at its July 22, 2010, meeting.

UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

SEC.

79-11-601 through 79-11-617. Repealed

§§ 79-11-601 through 79-11-617. Repealed.

Repealed by Laws of 2012, ch. 356, § 11, effective from and after July 1, 2012.

- § 79-11-601. [Laws, 1998, ch. 417, § 1, eff from and after July 1, 1998.]
- § 79-11-603. [Laws, 1998, ch. 417, § 2, eff from and after July 1, 1998.]
- § 79-11-605. [Laws, 1998, ch. 417, § 3, eff from and after July 1, 1998.]
- § 79-11-607. [Laws, 1998, ch. 417, § 4, eff from and after July 1, 1998.]
- § 79-11-609. [Laws, 1998, ch. 417, § 5, eff from and after July 1, 1998.]
- § 79-11-611. [Laws, 1998, ch. 417, § 6, eff from and after July 1, 1998.]
- § 79-11-613. [Laws, 1998, ch. 417, § 7, eff from and after July 1, 1998.]
- § 79-11-615. [Laws, 1998, ch. 417, § 8, eff from and after July 1, 1998.]

§ 79-11-617. [Laws, 1998, ch. 417, § 9, eff from and after July 1, 1998.]

Editor's Note — Former § 79-11-601 provided definitions of terms used in §§ 79-11-601 through 79-11-617.

Former § 79-11-603 related to appropriations by the governing board for expenditures for the uses and purposes for which an endowment fund was established.

Former § 79-11-605 related to the application of § 79-11-603 to certain gift instruments.

Former § 79-11-607 related to the powers and duties of the governing board regarding investments.

Former § 79-11-609 related to the powers and duties of the governing board regarding delegation, contracting and payment of compensation.

Former § 79-11-611 related to the governing board's duty of care.

Former § 79-11-613 related to the release of restrictions imposed by gift instruments, donor consent, and application to the chancery court for release of a restriction.

Former § 79-11-615 related to the application and construction of §§ 79-11-601 through 79-11-617.

Former § 79-11-617 provided the short title for §§ 79-11-601 through 79-11-617.

UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

SEC.

- 79-11-701. Short title.
- 79-11-703. Definitions.
- 79-11-705. Standard of conduct in managing and investing institutional fund.
- 79-11-707. Appropriation for expenditure or accumulation of endowment fund; rules of construction.
- 79-11-709. Delegation of management and investment.
- 79-11-711. Release or modification of restrictions on management, investment, or purpose.
- 79-11-713. Reviewing compliance.
- 79-11-715. Application to existing institutional funds.
- 79-11-717. Relation to Electronic Signatures in Global and National Commerce Act.
- 79-11-719. Uniformity of application and construction.

§ 79-11-701. Short title.

Sections 79-11-701 through 79-11-719 may be cited as the Uniform Prudent Management of Institutional Funds Act.

SOURCES: Laws, 2012, ch. 356, § 1, eff from and after July 1, 2012.

Editor's Note — The Uniform Prudent Management of Institutional Funds Act, enacted by §§ 1 through 10 of Chapter 356, Laws of 2012, and codified as §§ 79-11-701 through 79-11-719, replaces the Uniform Management of Institutional Funds Act (former §§ 79-11-601 through 79-11-617), which was repealed by § 11 of Chapter 356, Laws of 2012.

§ 79-11-703. Definitions.

In Sections 79-11-701 through 79-11-719:

- (a) "Charitable purpose" means either:

(i) Any purpose described in Section 501(c)(3) of the Internal Revenue Code; or

(ii) Any voluntary health and welfare, charitable, benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary purpose.

(b) “Endowment fund” means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(c) “Gift instrument” means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(d) “Institution” means:

(i) A person, other than an individual, organized and operated exclusively for charitable purposes;

(ii) A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose;

(iii) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated; or

(iv) The term “institution” does not include any bank, trust company, or other regulated financial institution.

(e) “Institutional fund” means a fund held by an institution exclusively for charitable purposes. The term does not include:

(i) Program-related assets;

(ii) A fund held for an institution by a trustee that is not an institution; or

(iii) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(f) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(g) “Program-related asset” means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(h) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

SOURCES: Laws, 2012, ch. 356, § 2, eff from and after July 1, 2012.

Federal Aspects — Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

§ 79-11-705. Standard of conduct in managing and investing institutional fund.

(1) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(2) In addition to complying with the duty of loyalty imposed by law other than Sections 79-11-701 through 79-11-719, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(3) In managing and investing an institutional fund, an institution:

(a) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(b) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(4) Subject to the intent of a donor expressed in a gift instrument, an institution may pool two (2) or more institutional funds for purposes of management and investment.

(5) Except as otherwise provided by a gift instrument, the following rules apply:

(a) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(i) General economic conditions;

(ii) The possible effect of inflation or deflation;

(iii) The expected tax consequences, if any, of investment decisions or strategies;

(iv) The role that each investment or course of action plays within the overall investment portfolio of the fund;

(v) The expected total return from income and the appreciation of investments;

(vi) Other resources of the institution;

(vii) The needs of the institution and the fund to make distributions and to preserve capital; and

(viii) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

(b) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(c) Except as otherwise provided by law other than Sections 79-11-701 through 79-11-719, an institution may invest in any kind of property or type of investment consistent with this section.

(d) An institution shall reasonably manage the risk of concentrated holdings of assets by diversifying the investments of the institutional fund or by using some other appropriate mechanism, except as provided as follows:

(i) The duty imposed by this subsection (5) shall not apply if the institution reasonably determines that, because of special circumstances, or because of the specific purposes, terms, distribution requirements, and other circumstances of the institutional fund, the purposes of such fund are better served without complying with the duty. For purposes of this subparagraph, special circumstances shall include an asset's special relationship or special value, if any, to the charitable purposes of the institution or to the donor;

(ii) No person responsible for managing and investing an institutional fund shall be liable for failing to comply with the duty imposed by this subsection (5) to the extent that the terms of the gift instrument or express written agreement between the donor and the institution limit or waive the duty; and

(iii) The governing board of an institution may retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable.

(e) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of Sections 79-11-701 through 79-11-719.

(f) A person who has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds. This paragraph does not apply to a volunteer who is not compensated beyond reimbursement for expenses.

SOURCES: Laws, 2012, ch. 356, § 3, eff from and after July 1, 2012.

§ 79-11-707. Appropriation for expenditure or accumulation of endowment fund; rules of construction.

(1) Subject to the intent of a donor expressed in the gift instrument or to any express written agreement between a donor and an institution, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (a) The duration and preservation of the endowment fund;
- (b) The purposes of the institution and the endowment fund;
- (c) General economic conditions;
- (d) The possible effect of inflation or deflation;
- (e) The expected total return from income and the appreciation of investments;
- (f) Other resources of the institution; and
- (g) The investment policy of the institution.

(2) In order to limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section, a gift instrument must specifically state the limitation.

(3) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

(a) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(b) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section.

SOURCES: Laws, 2012, ch. 356, § 4, eff from and after July 1, 2012.

§ 79-11-709. Delegation of management and investment.

(1) Except as otherwise provided in a gift instrument or by law other than Sections 79-11-701 through 79-11-719, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (a) Selecting an agent;
- (b) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
- (c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(3) Absent gross negligence, wantonness, recklessness, or deliberate misconduct, an institution that complies with subsection (1) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(4) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the

jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(5) An institution may delegate management and investment functions to its committees, officers, or employees as otherwise authorized by law.

SOURCES: Laws, 2012, ch. 356, § 5, eff from and after July 1, 2012.

§ 79-11-711. Release or modification of restrictions on management, investment, or purpose.

(1) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(2) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(3) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument.

(4) An application to the court under subsection (2) or (3) of this section shall be made in the name of the institution to the chancery court of the county in which the principal activities of the institution are conducted.

SOURCES: Laws, 2012, ch. 356, § 6, eff from and after July 1, 2012.

§ 79-11-713. Reviewing compliance.

Compliance with Sections 79-11-701 through 79-11-719 is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

SOURCES: Laws, 2012, ch. 356, § 7, eff from and after July 1, 2012.

§ 79-11-715. Application to existing institutional funds.

Sections 79-11-701 through 79-11-719 applies to institutional funds existing on or established after July 1, 2012. As applied to institutional funds existing on July 1, 2012, this act governs only decisions made or actions taken on or after that date.

SOURCES: Laws, 2012, ch. 356, § 8, eff from and after July 1, 2012.

§ 79-11-717. Relation to Electronic Signatures in Global and National Commerce Act.

Sections 79-11-701 through 79-11-719 modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USCS Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 USCS Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USCS Section 7003(b).

SOURCES: Laws, 2012, ch. 356, § 9, eff from and after July 1, 2012.

§ 79-11-719. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SOURCES: Laws, 2012, ch. 356, § 10, eff from and after July 1, 2012.

CHAPTER 13

Uniform Partnership Act (1997)

| | | |
|-------------|---|------------|
| Article 5. | Transferees and Creditors of Partner | 79-13-501 |
| Article 10. | Limited Liability Partnership | 79-13-1001 |
| Article 11. | Foreign limited liability partnership | 79-13-1101 |

ARTICLE 1.

GENERAL PROVISIONS.

§ 79-13-103. Effect of partnership agreement; nonwaivable provisions.

JUDICIAL DECISIONS

1. Direct-benefit estoppel theory.

Denial of the law firm's motion to compel arbitration and to stay pending completion of arbitration was inappropriate because the direct-benefit estoppel theory

requires the nonsignatory claimant, the employee, to arbitrate his claims against the law firm, Miss. Code Ann. § 79-13-103. Richard F. Scruggs & SLF, Inc. v. Wyatt, 60 So. 3d 758 (Miss. 2011).

ARTICLE 2.

NATURE OF PARTNERSHIP.

§ 79-13-202. Formation of partnership.

Joint Legislative Committee Note — In 2009, a typographical error in subsection (a) was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by inserting the word “of” following “...to carry on as co-owners...” The section as set out in the bound volume reflects these corrections, which were ratified by the Joint Committee at its July 22, 2010, meeting.

ARTICLE 3.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP.

§ 79-13-301. Partner agent of partnership.

JUDICIAL DECISIONS

1. Ordinary course of partnership business.

Trial court erred by finding that an attorney’s misconduct in attempting to bribe a trial judge occurred in the ordinary course of a joint venture’s business. It was undisputed that the attempted

bribery was not actually authorized by the joint venture, and there was no assertion that the bribing attorney acted with apparent authority under Miss. Code Ann. § 79-13-301(1). *Barrett v. Jones*, — So. 3d —, 2008 Miss. LEXIS 706 (Miss. Nov. 12, 2008).

§ 79-13-305. Partnership liable for partner’s actionable conduct.

JUDICIAL DECISIONS

1. Ordinary course of partnership business.

Under Miss. Code Ann. § 79-13-305, a partnership could be liable for “any penalty” incurred as a result of the wrongful act or actionable conduct by a partner in the ordinary course of partnership business; thus, the trial court possessed the

discretion to sanction the partnership for a partner’s misconduct in attempting to bribe the trial judge in the underlying action, but only upon a finding that a partner’s misconduct was within the ordinary course of business of the partnership. *Barrett v. Jones*, — So. 3d —, 2008 Miss. LEXIS 706 (Miss. Nov. 12, 2008).

§ 79-13-306. Partner’s liability.

JUDICIAL DECISIONS

.5. Application.

Although all co-venturers are jointly and severally liable for joint-venture obligations pursuant to Miss. Code Ann. § 79-

13-306(a), where an attorney’s misconduct in attempting to bribe a trial judge was not authorized by the joint venture, his co-venturers were not liable. *Barrett v.*

Jones, — So. 3d —, 2008 Miss. LEXIS 706
(Miss. Nov. 12, 2008).

§ 79-13-307. Actions by and against partnership and partners.

JUDICIAL DECISIONS

.5. Applicability.

The trial court's treatment of former plaintiffs' lawsuit as one against its former co-venturers' assets was not an abuse of discretion; the suit was an attempt by the plaintiff to obtain what it asserted to be its rightful share of joint venture profits under the joint venture agreement,

and rather than suing the joint venture itself, plaintiff chose to sue the co-venturers, a litigation strategy encouraged by Miss. Code Ann. § 79-13-307(c), as well as two individuals who were not co-venturers. *Barrett v. Jones*, — So. 3d —, 2008 Miss. LEXIS 706 (Miss. Nov. 12, 2008).

ARTICLE 5.

TRANSFEREES AND CREDITORS OF PARTNER.

SEC.

79-13-505. Enforceability of limitations on assignments of partnership interests.

§ 79-13-505. Enforceability of limitations on assignments of partnership interests.

Sections 75-9-406 and 75-9-408 do not apply to a partnership interest in a partnership formed under the laws of Mississippi, including the rights, powers and interests arising under a certificate of partnership or partnership agreement or under this chapter. To the extent of any conflict or inconsistency between this section and Sections 75-9-406 and 75-9-408, this section prevails. It is the express intent of this section to permit the enforcement, as a contract among the partners of a partnership, of any provision of a partnership agreement that would otherwise be ineffective under Sections 75-9-406 and 75-9-408.

SOURCES: Laws, 2010, ch. 506, § 41, eff from and after July 1, 2010.

ARTICLE 10.

LIMITED LIABILITY PARTNERSHIP.

SEC.

79-13-1001. Statement of qualification.

79-13-1003. Administrative dissolution of statement of qualification; grounds [Effective January 1, 2013].

79-13-1004. Administrative dissolution of statement of qualification; procedure [Effective January 1, 2013].

79-13-1005. Administrative dissolution of statement of qualification; reinstatement [Effective January 1, 2013].

79-13-1006. Appeal from denial of reinstatement [Effective January 1, 2013].

§ 79-13-1001. Statement of qualification.

[Effective until January 1, 2013, this section will read:]

(a) A partnership may become a limited liability partnership pursuant to this section.

(b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(c) After the approval required by subsection (b), a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain:

- (1) The name of the partnership;
- (2) The street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any;
- (3) If the partnership does not have an office in this state, the name and street address of the partnership's agent for service of process;
- (4) A statement that the partnership elects to be a limited liability partnership; and
- (5) A deferred effective date, if any.

(d) The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 79-13-105(d).

(f) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c).

(g) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(h) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

[Effective from and after January 1, 2013, this section will read:]

(a) A partnership may become a limited liability partnership pursuant to this section.

(b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the

partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(c) After the approval required by subsection (b), a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain:

- (1) The name of the partnership;
- (2) The street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any;
- (3) If the partnership does not have an office in this state, the information required by Section 79-35-5(a);
- (4) A statement that the partnership elects to be a limited liability partnership; and
- (5) A deferred effective date, if any.

(d) [Reserved]

(e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 79-13-105(d).

(f) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c).

(g) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(h) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

SOURCES: Laws, 2004, ch. 458, § 1001; Laws, 2012, ch. 382, § 76, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment effective January 1, 2013, added “the information required by Section 79-35-5(a)” at the end of (c)(3); and rewrote (d).

§ 79-13-1003. Administrative dissolution of statement of qualification; grounds [Effective January 1, 2013].

The Secretary of State may commence a proceeding under Section 79-13-1004 to administratively dissolve a statement of qualification if:

- (1) The limited liability partnership does not pay within sixty (60) days after they are due any fees, taxes, or penalties imposed by this chapter or other law;
- (2) [Reserved]
- (3) The limited liability partnership is without a registered agent in this state for sixty (60) days or more;

(4) The limited liability partnership does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or that its registered agent has resigned; or

(5) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the limited liability partnership pursuant to this chapter.

SOURCES: Laws, 2012, ch. 382, § 77, eff from and after Jan. 1, 2013.

§ 79-13-1004. Administrative dissolution of statement of qualification; procedure [Effective January 1, 2013].

(a) If the Secretary of State determines that one or more grounds exist under Section 79-13-1003 for the administrative dissolution of a statement of qualification, the Secretary of State shall serve the limited liability partnership with written notice of his determination, except that such determination may be served by first-class mail.

(b) If the limited liability partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice, the Secretary of State shall administratively dissolve the statement of qualification by signing a certification of the dissolution that recites the ground for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve the limited liability partnership with a copy of the certificate, except that such certificate may be served by first-class mail.

(c) The administrative dissolution of a statement of qualification affects only the partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(d) A limited liability partnership administratively dissolved continues its existence but may carry on only business necessary to wind up and liquidate its business and affairs under Section 79-13-803.

(e) The administrative dissolution of the statement of qualification of a limited partnership does not terminate the authority of its agent for service of process.

SOURCES: Laws, 2012, ch. 382, § 78, eff from and after Jan. 1, 2013.

§ 79-13-1005. Administrative dissolution of statement of qualification; reinstatement [Effective January 1, 2013].

(a) A limited liability partnership whose statement of qualification has been administratively dissolved under Section 79-14-1004 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must:

(1) Recite the name of the limited liability partnership and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the limited liability partnership's name satisfies the requirements of Section 79-13-1002; and

(4) Contain a certificate from the Mississippi Department of Revenue reciting that all taxes owed by the limited liability partnership have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate and serve the limited liability partnership with a copy of the certificate.

(c) When the reinstatement is effective:

(1) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution;

(2) Any liability incurred by a member after the administrative dissolution and before the reinstatement shall be determined as if the administrative dissolution had never occurred; and

(3) The limited liability partnership may resume its business as if the administrative dissolution had never occurred.

SOURCES: Laws, 2012, ch. 382, § 79, eff from and after Jan. 1, 2013.

§ 79-13-1006. Appeal from denial of reinstatement [Effective January 1, 2013].

(a) If the Secretary of State denies a limited liability partnership's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited liability partnership with a record that explains the reason or reasons for denial.

(b) The limited liability partnership may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county where the limited partnership is domiciled within thirty (30) days after service of the notice of denial is perfected. The limited liability partnership appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the limited liability partnership's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved limited liability partnership or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 2012, ch. 382, § 80, eff from and after Jan. 1, 2013.

ARTICLE 11.

FOREIGN LIMITED LIABILITY PARTNERSHIP.

SEC.

- 79-13-1102. Statement of foreign qualification.
- 79-13-1106. Administrative revocation of statement of foreign qualification; grounds [Effective January 1, 2013].
- 79-13-1107. Administrative revocation of statement of foreign qualification; procedure [Effective January 1, 2013].
- 79-13-1108. Administrative revocation of statement of foreign qualification; reinstatement [Effective January 1, 2013].
- 79-13-1109. Appeal from denial of reinstatement [Effective January 1, 2013].

§ 79-13-1102. Statement of foreign qualification.

[Effective until January 1, 2013, this section will read:]

(a) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(1) The name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP" or "LLP";

(2) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any;

(3) If there is no office of the partnership in this state, the name and street address of the partnership's agent for service of process; and

(4) A deferred effective date, if any.

(b) The agent of a foreign limited liability company for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(c) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 79-13-105(d).

(d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

[Effective from and after January 1, 2013, this section will read:]

(a) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(1) The name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is

formed and ends with “Registered Limited Liability Partnership,” “Limited Liability Partnership,” “R.L.L.P.,” “L.L.P.,” “RLLP” or “LLP”;

(2) The street address of the partnership’s chief executive office;

(3) The information required by Section 79-35-5(a); and

(4) A deferred effective date, if any.

(b) [Reserved]

(c) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 79-13-105(d).

(d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

SOURCES: Laws, 2004, ch. 458, § 1102; Laws, 2012, ch. 382, § 81, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment deleted “and, if different, the street address of an office of the partnership in this state, if any” from the end of (a)(2); rewrote (a)(3); and rewrote (b).

§ 79-13-1106. Administrative revocation of statement of foreign qualification; grounds [Effective January 1, 2013].

(a) The Secretary of State may commence a proceeding under Section 79-14-1107 to revoke the statement of foreign qualification of a foreign limited liability partnership authorized to transact business in this state if:

(1) [Reserved]

(2) The foreign limited liability partnership does not pay within sixty (60) days after they are due any fees, taxes, or penalties imposed by this chapter or other law;

(3) The foreign limited partnership is without a registered agent in this state for sixty (60) days or more;

(4) The limited partnership does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or that its registered agent has resigned;

(5) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other public official having custody of corporate records in the state or country under whose law the foreign limited liability partnership is organized stating that it has been dissolved or disappeared as the result of a merger; or

(6) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the limited liability partnership pursuant to this chapter.

(b) The Secretary of State may not revoke a statement of foreign qualification of a foreign limited liability partnership unless the Secretary of State sends the limited liability partnership notice of the revocation at least sixty

(60) days before its effective date, by a record addressed to its registered agent, or to the limited liability partnership if the limited liability partnership fails to appoint and maintain a proper agent in this state. The notice must specify the cause for the revocation of the registration. The authority of the limited liability partnership to transact business in this state ceases on the effective date of the revocation unless the foreign limited liability partnership cures the failure before that date.

SOURCES: Laws, 2012, ch. 382, § 82, eff from and after Jan. 1, 2013.

§ 79-13-1107. Administrative revocation of statement of foreign qualification; procedure [Effective January 1, 2013].

(a) If the Secretary of State determines that one or more grounds exist under Section 79-14-1106 for revocation of a statement of foreign qualification, he shall serve the foreign limited liability partnership with written notice of his determination, except that such determination may be served by first-class mail.

(b) If the foreign limited liability partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected, the Secretary of State may revoke the foreign limited liability partnership's statement of foreign qualification by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign limited liability partnership, except that such certificate may be served by first-class mail.

(c) The authority of a foreign limited liability partnership to transact business in this state ceases on the date shown on the certificate revoking its registration.

(d) The Secretary of State's revocation of a foreign limited liability partnership's registration appoints the Secretary of State the foreign limited liability partnership's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited liability partnership was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign limited liability partnership. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign limited liability partnership at its principal office shown in its most recent communication received from the foreign limited liability partnership stating the current mailing address of its principal office, or, if none are on file, in its application for a registration.

(e) Revocation of a foreign limited liability partnership's statement of foreign qualification does not terminate the authority of the registered agent of the limited liability partnership.

SOURCES: Laws, 2012, ch. 382, § 83, eff from and after Jan. 1, 2013.

§ 79-13-1108. Administrative revocation of statement of foreign qualification; reinstatement [Effective January 1, 2013].

(a) A foreign limited liability partnership whose statement of foreign qualification is administratively revoked under Section 79-13-1107 may apply to the Secretary of State for reinstatement at any time after the effective date of such revocation. The application must:

(1) Recite the name of the limited liability partnership and the effective date of the administrative revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated;

(3) State that the limited liability partnership's name satisfies the requirements of Section 79-13-1002; and

(4) Contain a certificate from the Mississippi Department of Revenue reciting that the limited liability partnership has properly filed all reports and paid all taxes and penalties required by revenue laws of this state.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, he shall reinstate the registration, prepare a certificate that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the limited liability partnership.

(c) When the reinstatement is effective:

(1) The reinstatement relates back to and takes effect as of the effective date of the administrative revocation;

(2) Any liability incurred by a member after the administrative revocation and before the reinstatement shall be determined as if the administrative revocation had never occurred; and

(3) The limited liability partnership may resume its business as if the administrative revocation had never occurred.

SOURCES: Laws, 2012, ch. 382, § 84, eff from and after Jan. 1, 2013.

§ 79-13-1109. Appeal from denial of reinstatement [Effective January 1, 2013].

(a) If the Secretary of State denies a foreign limited liability partnership's application for reinstatement of the statement of foreign qualification following administrative revocation, he shall serve the limited liability partnership with a written communication that explains the reason or reasons for denial.

(b) The limited liability partnership may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county where the limited liability partnership is domiciled within thirty (30) days after service of the communication of denial is perfected. The limited liability partnership appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's communication of denial.

(c) The court may summarily order the Secretary of State to reinstate the registration of the limited liability partnership or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 2012, ch. 382, § 85, eff from and after Jan. 1, 2013.

CHAPTER 14

Mississippi Limited Partnership Act

| | | |
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ARTICLE 1.

GENERAL PROVISIONS.

SEC.

79-14-104. Office.

§ 79-14-104. Office.

[Effective until January 1, 2013, this section will read:]

(a) Each limited partnership shall have and maintain continuously in the State of Mississippi:

(1) An office, which may but need not be a place of its business in the State of Mississippi, at which shall be kept the records required by Section 79-14-105 to be maintained; and

(2) A registered agent for service of process on the limited partnership, which agent must be either an individual resident of the State of Mississippi, a domestic business corporation, or a foreign corporation authorized to do business in the State of Mississippi.

(b) A registered agent may change his address to another address in the State of Mississippi by paying a fee as set forth in Section 79-14-1104 and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the names of all the limited partnerships represented by such registered agent, and the address at which such registered agent has maintained his office for each of such limited partnerships, and further certifying to his new address which will be effective on a given day, and which new address such registered agent will thereafter maintain for each of the limited partnerships recited in the certificate. Upon the filing of such certificate, the Secretary of State will furnish to the registered agent a certified copy of the same under his hand and seal of office, and thereafter, or until further change of address,

as authorized by law, the registered agent's office in the State of Mississippi of each of the limited partnerships recited in the certificate shall be located at the new address of the registered agent thereof as given in the certificate. Filing of such certificate shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby, and each such limited partnership shall not be required to take any further action with respect thereto to amend its certificate of limited partnership under Section 79-14-202. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited partnership affected thereby.

(c) The registered agent of one or more limited partnerships may resign his agency appointment by paying a fee as set forth in Section 79-14-1104 and filing a certificate with the Secretary of State stating that it resigns as registered agent for such limited partnerships as are identified in the certificate, but such resignation shall not become effective until ninety (90) days after the certificate is filed. There shall be attached to such certificate an affidavit of such registered agent, if an individual, or of the president, a vice president or the secretary thereof if a corporation, that at least thirty (30) days prior and on or about the date of the filing of said certificate, notices were sent by certified or registered mail to each limited partnership for which such registered agent is resigning as registered agent, at the principal place of business thereof within or without the State of Mississippi if known to such registered agent or, if not, to the last known address of the attorney or other individual at whose request such registered agent was appointed for such limited partnership, of the resignation of such registered agent. Additionally, if the registered agent does not know of the principal place of business of the limited partnership, the registered agent shall send notice to the office of the limited partnership in the State of Mississippi as designated in subsection (a) of this section, if its address is different from that of the registered agent so resigning. After receipt of the notice of resignation of its registered agent, the limited partnership for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the limited partnership for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with the Mississippi Rules of Civil Procedure.

[Effective from and after January 1, 2013, this section will read:]

Each limited partnership shall have and maintain continuously in the State of Mississippi an office, which may but need not be a place of its business in the State of Mississippi, at which shall be kept the records required by Section 79-14-105 to be maintained.

SOURCES: Laws, 1987, ch. 488, § 104; Laws, 2012, ch. 382, § 86, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote the section.

ARTICLE 2.

FORMATION: CERTIFICATE OF LIMITED PARTNERSHIP.

SEC.

79-14-201. Certificate of limited partnership.

79-14-202. Amendment to certificate.

79-14-207. Liability for false statement in certificate.

§ 79-14-201. Certificate of limited partnership.

[Effective until January 1, 2013, this section will read:]

(a) In order to form a limited partnership, a certificate of limited partnership must be signed and delivered to the office of the Secretary of State for filing. The certificate must set forth:

(1) The name of the limited partnership;

(2) The street and mailing address of the office and the name and the street and mailing address of the registered agent for service of process, required to be maintained by Section 79-14-104;

(3) The name and the street and mailing address of each general partner;

(4) The latest date upon which the limited partnership is to dissolve; and

(5) Any other matters the general partners determine to include therein.

(b) A limited partnership is formed at the date and time of the filing of the certificate of limited partnership in the office of the Secretary of State, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

(c) For all purposes, a copy of the certificate of limited partnership duly certified by the Secretary of State is conclusive evidence of the formation of a limited partnership and prima facie evidence of its existence.

[Effective from and after January 1, 2013, this section will read:]

(a) In order to form a limited partnership, a certificate of limited partnership must be signed and delivered to the office of the Secretary of State for filing. The certificate must set forth:

(1) The name of the limited partnership;

(2) The information required by Section 79-35-5(a);

(3) The name and the street and mailing address of each general partner;

(4) The latest date upon which the limited partnership is to dissolve; and

(5) Any other matters the general partners determine to include therein.

(b) A limited partnership is formed at the date and time of the filing of the certificate of limited partnership in the office of the Secretary of State, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

(c) For all purposes, a copy of the certificate of limited partnership duly certified by the Secretary of State is conclusive evidence of the formation of a limited partnership and prima facie evidence of its existence.

SOURCES: Laws, 1987, ch. 488, § 201; Laws, 1997, ch. 418, § 13; Laws, 2012, ch. 382, § 87, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote (a)(2).

§ 79-14-202. Amendment to certificate.

[Effective until January 1, 2013, this section will read:]

(a) A certificate of limited partnership is amended by delivery of a certificate of amendment thereto to the office of the Secretary of State for filing. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The future effective date of the amendment, which must be a date certain, unless it is effective upon the filing of the certificate of amendment; and
- (3) The amendment to the certificate.

(b) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

(c) Notwithstanding the requirements of subsection (b) of this section, within thirty (30) days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be delivered to the office of the Secretary of State for filing:

- (1) The admission of a new general partner;
- (2) The withdrawal of a general partner;
- (3) The continuation of the business under Section 79-14-801 after an event of withdrawal of a general partner;
- (4) A change in the name of the limited partnership;
- (5) A change in the street or mailing address of the office of the limited partnership; or
- (6) A change in the name or the street or mailing address of the registered agent of the limited partnership.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(e) Except as provided in Section 79-14-402(b), if an amendment to a certificate of limited partnership is delivered to the office of the Secretary of State in compliance with subsection (c) of this section, no person is subject to liability because the amendment was not filed earlier.

[Effective from and after January 1, 2013, this section will read:]

(a) A certificate of limited partnership is amended by delivery of a certificate of amendment thereto to the office of the Secretary of State for filing. The certificate shall set forth:

(1) The name of the limited partnership;

(2) The future effective date of the amendment, which must be a date certain, unless it is effective upon the filing of the certificate of amendment; and

(3) The amendment to the certificate.

(b) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate, or if appropriate, deliver to the Secretary of State for filing a statement of change of agent pursuant to Section 79-35-8.

(c) Notwithstanding the requirements of subsection (b) of this section, within thirty (30) days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be delivered to the office of the Secretary of State for filing:

(1) The admission of a new general partner;

(2) The withdrawal of a general partner;

(3) The continuation of the business under Section 79-14-801 after an event of withdrawal of a general partner;

(4) A change in the name of the limited partnership; or

(5) A change in the street or mailing address of the office of the limited partnership.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(e) Except as provided in Section 79-14-402(b), if an amendment to a certificate of limited partnership is delivered to the office of the Secretary of State in compliance with subsection (c) of this section, no person is subject to liability because the amendment was not filed earlier.

SOURCES: Laws, 1987, ch. 488, § 202; Laws, 1997, ch. 418, § 14; Laws, 2012, ch. 382, § 88, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment added “or if appropriate, deliver to the Secretary of State for filing a statement of change of agent pursuant to Section 79-35-8” at the end of (b); deleted former (c)(6) which read: “A change in the name or the street

or mailing address of the registered agent of the limited partnership"; and made minor stylistic changes.

§ 79-14-207. Liability for false statement in certificate.

[Effective until January 1, 2013, this section will read:]

(a) If a certificate of limited partnership or certificate of amendment, dissolution or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) A person who signed the certificate, or caused another to sign it on his behalf, and knew, and a general partner who knew or should have known, the statement to be false at the time the certificate was signed; and

(2) A general partner who knew or should have known after the filing of the certificate that an arrangement or other fact described in the certificate had changed, making the statement in the filed certificate inaccurate in any respect, within a reasonably sufficient time before the statements were relied upon to have enabled that general partner to amend, dissolve or cancel the certificate, or to file a petition for its amendment, dissolution or cancellation under Section 79-14-205.

(b) Except as provided in Section 79-14-402(b), no person shall have any liability for failing pursuant to subsection (a)(2) of this section to cause the amendment, dissolution or cancellation of a certificate to be filed or failing to file a petition for its amendment, dissolution or cancellation pursuant to subsection (a)(2) of this section if the certificate of amendment, certificate of dissolution, certificate of cancellation or petition is filed by the Secretary of State within thirty (30) days of when that person knew or should have known to the extent provided in subsection (a)(2) of this section that the statement in the certificate was inaccurate in any respect.

[Effective from and after January 1, 2013, this section will read:]

(a) If a certificate of limited partnership or certificate of amendment, dissolution or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) A person who signed the certificate, or caused another to sign it on his behalf, and knew, and a general partner who knew or should have known, the statement to be false at the time the certificate was signed; and

(2) A general partner who knew or should have known after the filing of the certificate that an arrangement or other fact described in the certificate had changed, making the statement in the filed certificate inaccurate in any respect, within a reasonably sufficient time before the statements were relied upon to have enabled that general partner to amend, dissolve or cancel the certificate, to file a petition for its amendment, dissolution or cancellation under Section 79-14-205, or to file a statement of change of agent pursuant to Section 79-35-8.

(b) Except as provided in Section 79-14-402(b), no person shall have any liability for failing pursuant to subsection (a)(2) of this section to cause the amendment, dissolution or cancellation of a certificate to be filed or failing to

file a petition for its amendment, dissolution or cancellation pursuant to subsection (a)(2) of this section if the certificate of amendment, certificate of dissolution, certificate of cancellation or petition is filed by the Secretary of State within thirty (30) days of when that person knew or should have known to the extent provided in subsection (a)(2) of this section that the statement in the certificate was inaccurate in any respect.

SOURCES: Laws, 1987, ch. 488, § 207; Laws, 1997, ch. 418, § 18; Laws, 2012, ch. 382, § 89, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment in (a)(2), added “or to file a statement of change of agent pursuant to Section 79-35-8” at the end and made a related change.

ARTICLE 7.

ASSIGNMENT OF PARTNERSHIP INTERESTS.

SEC.

79-14-706. Enforceability of limitations on assignments of limited partnership interests.

§ 79-14-706. Enforceability of limitations on assignments of limited partnership interests.

Sections 75-9-406 and 75-9-408 do not apply to a limited partnership interest in a limited partnership formed under the laws of Mississippi, including the rights, powers and interests arising under the certificate of limited partnership or limited partnership agreement or under this chapter. To the extent of any conflict or inconsistency between this section and Sections 75-9-406 and 75-9-408, this section prevails. It is the express intent of this section to permit the enforcement, as a contract among the partners of a limited partnership, of any provision of a limited partnership agreement that would otherwise be ineffective under Sections 75-9-406 and 75-9-408.

SOURCES: Laws, 2010, ch. 506, § 42, eff from and after July 1, 2010.

ARTICLE 8.

DISSOLUTION.

SEC.

79-14-809. Administrative dissolution; grounds [Effective January 1, 2013].
79-14-810. Administrative dissolution; procedure [Effective January 1, 2013].
79-14-811. Administrative dissolution; reinstatement [Effective January 1, 2013].
79-14-812. Appeal from denial of reinstatement [Effective January 1, 2013].

§ 79-14-809. Administrative dissolution; grounds [Effective January 1, 2013].

The Secretary of State may commence a proceeding under Section 79-14-810 to administratively dissolve a limited partnership if:

(a) The limited partnership does not pay within sixty (60) days after they are due any fees, taxes, or penalties imposed by this chapter or other law;

(b) [Reserved]

(c) The limited partnership is without a registered agent in this state for sixty (60) days or more;

(d) The limited partnership does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or that its registered agent has resigned; or

(e) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the limited partnership pursuant to this chapter.

SOURCES: Laws, 2012, ch. 382, § 90, eff from and after Jan. 1, 2013.

§ 79-14-810. Administrative dissolution; procedure [Effective January 1, 2013].

(a) If the Secretary of State determines that one or more grounds exist under Section 79-14-809 for administratively dissolving a limited partnership, the Secretary of State shall serve the limited partnership with written notice of his determination except that such determination may be served by first-class mail.

(b) If the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice, the Secretary of State shall administratively dissolve the limited partnership by signing a certification of the dissolution that recites the ground for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve the limited partnership with a copy of the certificate, except that such certificate may be served by first-class mail.

(c) A limited partnership administratively dissolved continues its existence but may carry on only business necessary to wind up and liquidate its business and affairs under Section 79-14-803.

(d) The administrative dissolution of a limited partnership does not terminate the authority of its agent for service of process.

SOURCES: Laws, 2012, ch. 382, § 91, eff from and after Jan. 1, 2013.

§ 79-14-811. Administrative dissolution; reinstatement [Effective January 1, 2013].

(a) A limited partnership administratively dissolved under Section 79-14-810 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must:

(1) Recite the name of the limited partnership and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the limited partnership's name satisfies the requirements of Section 79-14-102; and

(4) Contain a certificate from the Mississippi Department of Revenue reciting that all taxes owed by the limited partnership have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the limited partnership with a copy of the certificate.

(c) When the reinstatement is effective:

(1) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution;

(2) Any liability incurred by a member after the administrative dissolution and before the reinstatement shall be determined as if the administrative dissolution had never occurred; and

(3) The limited partnership may resume its business as if the administrative dissolution had never occurred.

SOURCES: Laws, 2012, ch. 382, § 92, eff from and after Jan. 1, 2013.

§ 79-14-812. Appeal from denial of reinstatement [Effective January 1, 2013].

(a) If the Secretary of State denies a limited partnership's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited partnership with a record that explains the reason or reasons for denial.

(b) The limited partnership may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county where the limited partnership is domiciled within thirty (30) days after service of the notice of denial is perfected. The limited partnership appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the limited partnership's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved limited partnership or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 2012, ch. 382, § 93, eff from and after Jan. 1, 2013.

ARTICLE 9.

FOREIGN LIMITED PARTNERSHIPS.

SEC.

- 79-14-902. Registration.
- 79-14-910. Administrative revocation of registration; grounds [Effective January 1, 2013].
- 79-14-911. Administrative revocation of registration; procedure [Effective January 1, 2013].
- 79-14-912. Administrative revocation of registration; reinstatement [Effective January 1, 2013].
- 79-14-913. Appeal from denial of reinstatement [Effective January 1, 2013].

§ 79-14-902. Registration.**[Effective until January 1, 2013, this section will read:]**

Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall deliver to the office of the Secretary of State for filing one (1) original of an application for registration as a foreign limited partnership, signed by a general partner and setting forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;

(2) The state and date of its formation;

(3) The name and street and mailing address of any registered agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the registered agent must be an individual resident of this state, a domestic corporation or a foreign corporation having a place of business in and authorized to do business in this state;

(4) A statement that the Secretary of State is appointed the registered agent of the foreign limited partnership for service of process if no registered agent has been appointed under paragraph (3) of this section or, if appointed, the registered agent's authority has been revoked or if the registered agent cannot be found or served with the exercise of reasonable diligence;

(5) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, the address of the principal office of the foreign limited partnership;

(6) The name and mailing and street address of each general partner; and

(7) The mailing and street address of the office at which is kept a list of the names and addresses of the limited partners and their contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is cancelled.

[Effective from and after January 1, 2013, this section will read:]

Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited

partnership shall deliver to the Office of the Secretary of State for filing one (1) original of an application for registration as a foreign limited partnership, signed by a general partner and setting forth:

- (1) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;
- (2) The state and date of its formation;
- (3) The information required by Section 79-35-5(a);
- (4) [Reserved]
- (5) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, the address of the principal office of the foreign limited partnership;
- (6) The name and mailing and street address of each general partner; and
- (7) The mailing and street address of the office at which is kept a list of the names and addresses of the limited partners and their contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is cancelled.

SOURCES: Laws, 1987, ch. 488, § 902; Laws, 1990, ch. 385, § 4; Laws, 1995, ch. 362, § 5; Laws, 1997, ch. 418, § 21; Laws, 2012, ch. 382, § 94, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote (3) and substituted Reserved line for former (4).

§ 79-14-910. Administrative revocation of registration; grounds [Effective January 1, 2013].

(a) The Secretary of State may commence a proceeding under Section 79-14-911 to revoke the registration of a foreign limited partnership authorized to transact business in this state if:

- (1) [Reserved]
- (2) The foreign limited partnership does not pay within sixty (60) days after they are due any fees, taxes, or penalties imposed by this chapter or other law;
- (3) The foreign limited partnership is without a registered agent in this state for sixty (60) days or more;
- (4) The limited partnership does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or that its registered agent has resigned;
- (5) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other public official having custody of corporate records in the state or country under whose law the foreign limited partnership is organized stating that it has been dissolved or disappeared as the result of a merger; or

(6) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the limited partnership pursuant to this chapter.

(b) The Secretary of State may not revoke a registration of a foreign limited partnership unless the Secretary of State sends the limited partnership notice of the revocation at least sixty (60) days before its effective date, by a record addressed to its registered agent, or to the limited partnership if the limited partnership fails to appoint and maintain a proper agent in this state. The notice must specify the cause for the revocation of the registration. The authority of the limited partnership to transact business in this state ceases on the effective date of the revocation unless the foreign limited partnership cures the failure before that date.

SOURCES: Laws, 2012, ch. 382, § 95, eff from and after Jan. 1, 2013.

§ 79-14-911. Administrative revocation of registration; procedure [Effective January 1, 2013].

(a) If the Secretary of State determines that one or more grounds exist under Section 79-14-910 for revocation of a registration, he shall serve the foreign limited partnership with written notice of his determination, except that such determination may be served by first-class mail.

(b) If the foreign limited partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected, the Secretary of State may revoke the foreign limited partnership's registration by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign limited partnership, except that such certificate may be served by first-class mail.

(c) The authority of a foreign limited partnership to transact business in this state ceases on the date shown on the certificate revoking its registration.

(d) The Secretary of State's revocation of a foreign limited partnership's registration appoints the Secretary of State the foreign limited partnership's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited partnership was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign limited partnership. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign limited partnership at its principal office shown in its most recent communication received from the limited partnership stating the current mailing address of its principal office, or, if none are on file, in its application for registration.

(e) Revocation of a foreign limited partnership's registration does not terminate the authority of the registered agent of the limited partnership.

SOURCES: Laws, 2012, ch. 382, § 96, eff from and after Jan. 1, 2013.

§ 79-14-912. Administrative revocation of registration; reinstatement [Effective January 1, 2013].

(a) A foreign limited partnership whose registration is administratively revoked under Section 79-14-911 may apply to the Secretary of State for reinstatement at any time after the effective date of such revocation. The application must:

(1) Recite the name of the limited partnership and the effective date of the administrative revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated;

(3) State that the limited partnership's name satisfies the requirements of Section 79-14-102; and

(4) Contain a certificate from the Mississippi Department of Revenue reciting that the limited partnership has properly filed all reports and paid all taxes and penalties required by revenue laws of this state.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, he shall reinstate the registration, prepare a certificate that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the limited partnership.

(c) When the reinstatement is effective:

(1) The reinstatement relates back to and takes effect as of the effective date of the administrative revocation;

(2) Any liability incurred by a member after the administrative revocation and before the reinstatement shall be determined as if the administrative revocation had never occurred; and

(3) The limited partnership may resume its business as if the administrative revocation had never occurred.

SOURCES: Laws, 2012, ch. 382, § 97, eff from and after Jan. 1, 2013.

§ 79-14-913. Appeal from denial of reinstatement [Effective January 1, 2013].

(a) If the Secretary of State denies a foreign limited partnership's application for reinstatement of the registration following administrative revocation, he shall serve the limited partnership with a written communication that explains the reason or reasons for denial.

(b) The limited partnership may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county where the limited partnership is domiciled within thirty (30) days after service of the communication of denial is perfected. The limited partnership appeals by petitioning the court to set aside the revocation and

attaching to the petition copies of the Secretary of State's communication of denial.

(c) The court may summarily order the Secretary of State to reinstate the registration of the limited partnership or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 2012, ch. 382, § 98, eff from and after Jan. 1, 2013.

ARTICLE 11.

MISCELLANEOUS.

SEC.
79-14-1104. Fees.

§ 79-14-1104. Fees.

[Effective until January 1, 2013, this section will read:]

Pursuant to this chapter, the Secretary of State shall charge and collect a fee for:

| | |
|--|---------|
| (a) Filing of Reservation of Partnership Name | \$25.00 |
| (b) Filing of Change of Address of Registered Agent | 25.00 |
| (c) Filing of Resignation of Registered Agent | 5.00 |
| (d) Filing of Certificate of Limited Partnership | 50.00 |
| (e) Filing of Amendment to Certificate of Limited Partnership ... | 50.00 |
| (f) Filing of Certificate of Dissolution | 25.00 |
| (g) Filing of Certificate of Cancellation | 25.00 |
| (h) Filing of Restated Certificate of Limited Partnership or Amended and Restated Certificate of Limited Partnership..... | 25.00 |
| (i) Filing of Certificate of Withdrawal | 25.00 |
| (j) Filing of Application for Registration of Foreign Limited Partnership | 250.00 |
| (k) Filing of Certificate Correcting Application for Registration of Foreign Limited Partnership | 50.00 |
| (l) Filing of Certificate of Cancellation of Registration of Foreign Limited Partnership | 25.00 |

[Effective from and after January 1, 2013, this section will read:]

Pursuant to this chapter, the Secretary of State shall charge and collect a fee for:

| | |
|---|---------|
| (a) Filing of Reservation of Partnership Name | \$25.00 |
| (b) [Reserved] | |
| (c) [Reserved] | |
| (d) Filing of Certificate of Limited Partnership | 50.00 |

| | |
|--|--------|
| (e) Filing of Amendment to Certificate of Limited Partnership | 50.00 |
| (f) Filing of Certificate of Dissolution | 25.00 |
| (g) Filing of Certificate of Cancellation | 25.00 |
| (h) Filing of Restated Certificate of Limited Partnership or Amended and Restated Certificate of Limited Partnership | 25.00 |
| (i) Filing of Certificate of Withdrawal | 25.00 |
| (j) Filing of Application for Registration of Foreign Limited Partnership | 250.00 |
| (k) Filing of Certificate Correcting Application for Registration of Foreign Limited Partnership | 50.00 |
| (l) Filing of Certificate of Cancellation of Registration of Foreign Limited Partnership | 25.00 |
| (m) Certificate of Administrative Dissolution | No fee |
| (n) Filing of Application for Reinstatement Following Administrative Dissolution | 50.00 |
| (o) Certificate of Revocation of Registration to Transact Business | No fee |
| (p) Filing of Application for Reinstatement Following Administrative Revocation | 100.00 |

SOURCES: Laws, 1987, ch. 488, § 1104; Laws, 2012, ch. 382, § 99, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment added (m) through (p) and substituted reserved lines for former (b) and (c).

CHAPTER 15

Investment Trusts

| | |
|---------------------------------|-----------|
| Foreign Investment Trusts | 79-15-101 |
|---------------------------------|-----------|

FOREIGN INVESTMENT TRUSTS

SEC.

| | |
|------------|--|
| 79-15-109. | Certificate of authority; application. |
| 79-15-129. | Certificate of authority; revocation; causes. |
| 79-15-131. | Certificate of authority; revocation; procedure. |
| 79-15-135. | Fees. |

§ 79-15-109. Certificate of authority; application.

[Effective until January 1, 2013, this section will read:]

A foreign investment trust, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the foreign investment trust and the state or country under the laws of which it is organized.

(b) if the name of the foreign investment trust does not contain the words "investment trust", then the name containing the words "investment trust" which it elects to use in this state.

(c) the date of declaration of trust and the period of duration of the trust.

(d) the address of the principal office of the foreign investment trust in the state or country under the laws of which it is organized.

(e) the address of the proposed registered office of the foreign investment trust in this state, and the name of its proposed registered agent in this state at such address.

(f) the purpose or purposes of the foreign investment trust which it proposes to pursue in the transaction of business in this state.

(g) the names and respective addresses of the trustees of the foreign investment trust.

(h) a statement of the aggregate number of shares of beneficial interest which the foreign investment trust has authority to issue and the unit value in dollars to be received by the trust for the issuance of each of such shares.

(i) a statement of the aggregate number of issued shares of beneficial interest.

(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable as in Section 79-15-135 prescribed.

Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by at least three (3) of the trustees and verified.

[Effective from and after January 1, 2013, this section will read:]

A foreign investment trust, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the Secretary of State, which application shall set forth:

(a) The name of the foreign investment trust and the state or country under the laws of which it is organized.

(b) If the name of the foreign investment trust does not contain the words "investment trust," then the name containing the words "investment trust" which it elects to use in this state.

(c) The date of declaration of trust and the period of duration of the trust.

(d) The address of the principal office of the foreign investment trust in the state or country under the laws of which it is organized.

(e) The information required by Section 79-35-5(a).

(f) The purpose or purposes of the foreign investment trust which it proposes to pursue in the transaction of business in this state.

(g) The names and respective addresses of the trustees of the foreign investment trust.

(h) A statement of the aggregate number of shares of beneficial interest which the foreign investment trust has authority to issue and the unit value in dollars to be received by the trust for the issuance of each of such shares.

(i) A statement of the aggregate number of issued shares of beneficial interest.

(j) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable as in Section 79-15-135 prescribed.

Such application shall be made on forms prescribed and furnished by the Secretary of State and shall be executed in duplicate by at least three (3) of the trustees and verified.

SOURCES: Laws, 1978, ch. 463, § 6; Laws, 2012, ch. 382, § 100, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote (e), which read “the address of the proposed registered office of the foreign investment trust in this state, and the name of its proposed registered agent in this state at such address.”

§ 79-15-115. Registered office and registered agent; requirement of maintenance in state [Repealed effective January 1, 2013].

SOURCES: Laws, 1978, ch. 463, § 9, eff from and after July 1, 1978.

Editor's Note — Laws of 2012, ch. 382, § 137, effective January 1, 2013, provides: “SECTION 137. Section 79-15-115, Mississippi Code of 1972, which requires that a foreign investment trust maintain a registered office and registered agent within the state, is repealed.”

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-15-117. Registered office and registered agent; change; resignation of registered agent [Repealed effective January 1, 2013].

SOURCES: Laws, 1978, ch. 463, § 10, eff from and after July 1, 1978.

Editor's Note — Laws of 2012, ch. 382, § 138, effective January 1, 2013, provides: “SECTION 138. Section 79-15-117, Mississippi Code of 1972, which provides for a change or resignation of registered office or registered agent by a foreign investment trust, is repealed.”

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-15-119. Service of process [Repealed effective January 1, 2013].

SOURCES: Laws, 1978, ch. 463, § 11, eff from and after July 1, 1978.

Editor's Note — Laws of 2012, ch. 382, § 139, effective January 1, 2013, provides: "SECTION 139. Section 79-15-119, Mississippi Code of 1972, which provides for service of process upon a foreign investment trust, is repealed."

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-15-121. Declaration of trust; filing of amendment.

Joint Legislative Committee Note — In 2009, a typographical error in the first sentence was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting "business in this state is amended" for "business in this state are amended." The section as set out in the bound volume reflects these corrections, which were ratified by the Joint Committee at its July 22, 2010, meeting.

§ 79-15-129. Certificate of authority; revocation; causes.

[Effective until January 1, 2013, this section will read:]

The certificate of authority of a foreign investment trust to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(a) The foreign investment trust has failed to pay any fees prescribed by Sections 79-15-101 through 79-15-139 when they have become due and payable; or

(b) The foreign investment trust has failed to appoint and maintain a registered agent in this state as required by Section 79-15-115; or

(c) The foreign investment trust has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by Section 79-15-117; or

(d) The foreign investment trust has failed to file in the office of the secretary of state any amendment to its declaration of trust within the time prescribed by Section 79-15-121; or

(e) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such foreign investment trust pursuant to Sections 79-15-101 through 79-15-139.

No certificate of authority of a foreign investment trust shall be revoked by the secretary of state unless (1) he shall have given the foreign investment trust not less than sixty (60) days' notice thereof by mail addressed to its registered office in this state, and (2) the foreign investment trust shall fail prior to revocation to pay such fees, or file the required statement of change of registered agent or registered office, or file such articles of amendment or correct such misrepresentation.

[Effective from and after January 1, 2013, this section will read:]

The certificate of authority of a foreign investment trust to transact business in this state may be revoked by the Secretary of State upon the conditions prescribed in this section when:

(a) The foreign investment trust has failed to pay any fees prescribed by Sections 79-15-101 through 79-15-139 when they have become due and payable;

(b) The foreign investment trust has failed to appoint and maintain a registered agent in this state as required by Section 79-15-115;

(c) The foreign investment trust has failed, after change of its registered agent, to file in the Office of the Secretary of State a statement of such change as required by Section 79-35-8;

(d) The foreign investment trust has failed to file in the Office of the Secretary of State any amendment to its declaration of trust within the time prescribed by Section 79-15-121; or

(e) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such foreign investment trust pursuant to Sections 79-15-101 through 79-15-139.

No certificate of authority of a foreign investment trust shall be revoked by the Secretary of State unless (1) he shall have given the foreign investment trust not less than sixty (60) days' notice thereof by mail as provided by Section 79-35-13, and (2) the foreign investment trust shall fail prior to revocation to pay such fees, or file the required statement of change of registered agent, or file such articles of amendment or correct such misrepresentation.

SOURCES: Laws, 1978, ch. 463, § 16; Laws, 2012, ch. 382, § 101, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment substituted “79-35-8” for “79-15-117; or” at the end of (c); and rewrote the last paragraph.

§ 79-15-131. Certificate of authority; revocation; procedure.

[Effective until January 1, 2013, this section will read:]

Upon revoking any such certificate of authority, the secretary of state shall:

(a) Issue a certificate of revocation in duplicate.

(b) File one (1) of such certificates in his office.

(c) Mail to such foreign investment trust at its registered office in this state a notice of such revocation accompanied by one (1) of such certificates.

Upon issuance of such certificate of revocation, the authority of the foreign investment trust to transact business in this state shall cease.

[Effective from and after January 1, 2013, this section will read:]

Upon revoking any such certificate of authority, the Secretary of State shall:

(a) Issue a certificate of revocation in duplicate.

(b) File one (1) of such certificates in his office.

(c) Mail to such foreign investment trust as provided in Section 79-35-13 a notice of such revocation accompanied by one (1) of such certificates.

Upon issuance of such certificate of revocation, the authority of the foreign investment trust to transact business in this state shall cease.

SOURCES: Laws, 1978, ch. 463, § 17; Laws, 2012, ch. 382, § 102, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment inserted “as provided in Section 79-35-13” in (c).

§ 79-15-135. Fees.

[Effective until January 1, 2013, this section will read:]

The secretary of state shall charge and collect from foreign investment trust for:

(a) Filing a statement of change of address of registered office or change of registered agent, or both, five dollars (\$5.00).

(b) Filing an application of a foreign investment trust for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred dollars (\$100.00).

(c) Filing an application of a foreign investment trust for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, twenty dollars (\$20.00).

(d) Filing a copy of an amendment to the articles of incorporation of a foreign investment trust holding a certificate of authority to transact business in this state, twenty dollars (\$20.00).

(e) Filing an application for withdrawal of a foreign investment trust and issuing a certificate of withdrawal, five dollars (\$5.00).

(f) Filing any other statement or report of a foreign investment trust, five dollars (\$5.00).

(g) For furnishing a certified copy of any document, instrument, or paper relating to a foreign investment trust, sixty cents (60¢) per page and two dollars (\$2.00) for the certificate and affixing the seal thereto, with a minimum charge of three dollars (\$3.00).

(h) At the time of any service of process on him as resident agent of a foreign investment trust, five dollars (\$5.00), which amount may be recovered as taxable cost by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

[Effective from and after January 1, 2013, this section will read:]

The Secretary of State shall charge and collect from foreign investment trust for:

(a) The fees required by Section 79-35-3.

(b) Filing an application of a foreign investment trust for a certificate of authority to transact business in this state and issuing a certificate of authority, One Hundred Dollars (\$100.00).

(c) Filing an application of a foreign investment trust for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, Twenty Dollars (\$20.00).

(d) Filing a copy of an amendment to the articles of incorporation of a foreign investment trust holding a certificate of authority to transact business in this state, Twenty Dollars (\$20.00).

(e) Filing an application for withdrawal of a foreign investment trust and issuing a certificate of withdrawal, Five Dollars (\$5.00).

(f) Filing any other statement or report of a foreign investment trust, Five Dollars (\$5.00).

(g) For furnishing a certified copy of any document, instrument, or paper relating to a foreign investment trust, Sixty Cents (60¢) per page and Two Dollars (\$2.00) for the certificate and affixing the seal thereto, with a minimum charge of Three Dollars (\$3.00).

(h) At the time of any service of process on him as resident agent of a foreign investment trust, Five Dollars (\$5.00), which amount may be recovered as taxable cost by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

SOURCES: Laws, 1978, ch. 463, §§ 19, 20; Laws, 2012, ch. 382, § 103, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote (a).

CHAPTER 16

Mississippi Registration of Foreign Business Trusts Act

SEC.

| | |
|-----------|---|
| 79-16-11. | Application for certificate of authority. |
| 79-16-27. | Certificate of authority; revocation; causes. |
| 79-16-29. | Certificate of authority; revocation procedure. |
| 79-16-33. | Fees. |

§ 79-16-11. Application for certificate of authority.

[Effective until January 1, 2013, this section will read:]

(1) A foreign business trust, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the Secretary of State, which application shall set forth:

(a) The name of the foreign business trust and the state or country under the laws of which it is organized;

(b) The date of declaration of trust and the period of duration of the trust;

(c) The address of the principal office of the foreign business trust in the state or country under the laws of which it is organized;

(d) The address of the registered office of the foreign business trust in this state and the name of its registered agent in this state at such address;

(e) The purpose or purposes of the foreign business trust which it proposes to pursue in the transaction of business in this state;

(f) The names and respective addresses of the trustees of the foreign business trust; and

(g) A statement of the aggregate number of shares of beneficial interest which the foreign business trust has authority to issue and the unit value in dollars to be received by the trust for the issuance of each of such shares.

(2) Such application shall be made on forms prescribed and furnished by the Secretary of State and shall be executed by at least one (1) of the trustees.

(3) A business trust shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the Secretary of State or other official having custody of trust records in the state or country under whose law it is created.

[Effective from and after January 1, 2013, this section will read:]

(1) A foreign business trust, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the Secretary of State, which application shall set forth:

(a) The name of the foreign business trust and the state or country under the laws of which it is organized;

(b) The date of declaration of trust and the period of duration of the trust;

(c) The address of the principal office of the foreign business trust in the state or country under the laws of which it is organized;

(d) The information required by Section 79-35-5(a);

(e) The purpose or purposes of the foreign business trust which it proposes to pursue in the transaction of business in this state;

(f) The names and respective addresses of the trustees of the foreign business trust; and

(g) A statement of the aggregate number of shares of beneficial interest which the foreign business trust has authority to issue and the unit value in dollars to be received by the trust for the issuance of each of such shares.

(2) Such application shall be made on forms prescribed and furnished by the Secretary of State and shall be executed by at least one (1) of the trustees.

(3) A business trust shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the Secretary of State or other official having custody of trust records in the state or country under whose law it is created.

SOURCES: Laws, 1998, ch. 428, § 6; Laws, 2012, ch. 382, § 104, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote (1)(d).

§ 79-16-17. Registered office and registered agent; requirement of maintenance in state [Repealed effective January 1, 2013].

SOURCES: Laws, 1998, ch. 428, § 9, eff from and after July 1, 1998.

Editor's Note — Laws of 2012, ch. 382, § 140, effective January 1, 2013, provides: "SECTION 140. Section 79-16-17, Mississippi Code of 1972, which requires that a foreign business trust maintain a registered office and registered agent within the state, is repealed.

For the text of this section effective until January 1, 2013, see the bound volume."

§ 79-16-19. Registered office and registered agent; change; resignation of registered agent [Repealed effective January 1, 2013].

SOURCES: Laws, 1998, ch. 428, § 10, eff from and after July 1, 1998.

Editor's Note — Laws of 2012, ch. 382, § 141, effective January 1, 2013, provides: "SECTION 141. Section 79-16-19, Mississippi Code of 1972, which provides for a change or resignation of registered office or registered agent by a foreign business trust, is repealed."

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-16-21. Service of process [Repealed effective January 1, 2013].

SOURCES: Laws, 1998, ch. 428, § 11, eff from and after July 1, 1998.

Editor's Note — Laws of 2012, ch. 382, § 142, effective January 1, 2013, provides: "SECTION 142. Section 79-16-21, Mississippi Code of 1972, which provides for service of process upon a foreign business trust, is repealed."

For the text of this section effective until January 1, 2013, see the bound volume.

§ 79-16-27. Certificate of authority; revocation; causes.

[Effective until January 1, 2013, this section will read:]

(1) The certificate of authority of a foreign business trust to transact business in this state may be revoked by the Secretary of State upon the condition prescribed in this section when:

(a) The foreign business trust has failed to pay any fees prescribed by law when they become due and payable;

(b) The foreign business trust has failed to appoint and maintain a registered agent in this state;

(c) The foreign business trust has failed, after change of its registered office or registered agent, to file in the Office of Secretary of State a statement of such change as required by law; or

(d) A misrepresentation has been made of any material matter in an application, report, affidavit or other document submitted by such foreign business trust pursuant to law.

(2) No certificate of authority of a foreign business trust shall be revoked by the Secretary of State unless:

(a) He shall have given the foreign business trust not less than sixty (60) days' notice thereof by mail addressed to its registered office in this state; and

(b) The foreign business trust shall fail prior to revocation to pay such fees, any taxes owed or file the required statement of change of registered agent or registered office, or file such amendment or correct such misrepresentation.

[Effective from and after January 1, 2013, this section will read:]

(1) The certificate of authority of a foreign business trust to transact business in this state may be revoked by the Secretary of State upon the condition prescribed in this section when:

(a) The foreign business trust has failed to pay any fees prescribed by law when they become due and payable;

(b) The foreign business trust has failed to appoint and maintain a registered agent in this state;

(c) The foreign business trust has failed, after change of its registered office or registered agent, to file in the Office of Secretary of State an appropriate filing as required by the Mississippi Registered Agents Act, Chapter 35, Title 79, Mississippi Code of 1972; or

(d) A misrepresentation has been made of any material matter in an application, report, affidavit or other document submitted by such foreign business trust pursuant to law.

(2) No certificate of authority of a foreign business trust shall be revoked by the Secretary of State unless:

(a) He shall have given the foreign business trust not less than sixty (60) days' notice thereof by mail addressed to its registered office in this state; and

(b) The foreign business trust shall fail prior to revocation to pay such fees, any taxes owed or file the required appropriate filing as required by the Mississippi Registered Agents Act, Chapter 35, Title 39, Mississippi Code of 1972, to report a change of registered agent or address of registered agent, or file such amendment or correct such misrepresentation.

SOURCES: Laws, 1998, ch. 428, § 14; Laws, 2012, ch. 382, § 105, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment substituted “an appropriate filing as required by the Mississippi Registered Agents Act, Chapter 35, title 79, Mississippi Code of 1972” for “a statement of such change as required by law” at the end of (1)(c); and rewrote (2)(b).

§ 79-16-29. Certificate of authority; revocation procedure.**[Effective until January 1, 2013, this section will read:]**

(1) Upon revoking such certificate of authority, the Secretary of State shall:

(a) Issue a certificate of revocation;

(b) File one (1) of such certificates in his office; and

(c) Mail to such foreign business trust at its registered office in this state a notice of such revocation accompanied by one (1) of such certificates.

(2) Upon issuance of such certificate of revocation, the authority of the foreign business trust to transact business in this state shall cease.

[Effective from and after January 1, 2013, this section will read:]

(1) Upon revoking such certificate of authority, the Secretary of State shall:

- (a) Issue a certificate of revocation;
- (b) File one (1) of such certificates in his office; and
- (c) Mail to such foreign business trust to its registered agent as provided in Section 79-35-13 a notice of such revocation accompanied by one (1) of such certificates.

(2) Upon issuance of such certificate of revocation, the authority of the foreign business trust to transact business in this state shall cease.

SOURCES: Laws, 1998, ch. 428, § 15; Laws, 2012, ch. 382, § 106, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment substituted “agent as provided in Section 79-35-13” for “office in this state” in (1)(c).

§ 79-16-33. Fees.

[Effective until January 1, 2013, this section will read:]

The Secretary of State shall charge and collect from foreign business trust for:

- (1) Filing a statement of change of address of registered office or change of registered agent, or both, Twenty-five Dollars (\$25.00);
- (2) Filing an application of a foreign business trust for a certificate of authority to transact business in this state and issuing a certificate of authority, Two Hundred Fifty Dollars (\$250.00);
- (3) Filing a certificate of correction or amendment of a foreign business trust authorized to transact business in this state, Fifty Dollars (\$50.00);
- (4) Filing an application for withdrawal of a foreign business trust and issuing a certificate of withdrawal, Twenty-five Dollars (\$25.00);
- (5) Filing any other statement or report of a foreign business trust, Twenty-five Dollars (\$25.00);
- (6) For furnishing a certified copy of any document, instrument or paper relating to a foreign business trust, One Dollar (\$1.00) per page and Ten Dollars (\$10.00) for the certificate and affixing the seal thereto; and
- (7) At the time of any service of process on him as resident agent of a foreign business trust, Twenty-five Dollars (\$25.00), which amount may be recovered as taxable cost by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

[Effective from and after January 1, 2013, this section will read:]

The Secretary of State shall charge and collect from foreign business trust for:

- (1) Filings required by the Mississippi Registered Agents Act, the fees required by Section 79-35-3;
- (2) Filing an application of a foreign business trust for a certificate of authority to transact business in this state and issuing a certificate of authority, Two Hundred Fifty Dollars (\$250.00);
- (3) Filing a certificate of correction or amendment of a foreign business trust authorized to transact business in this state, Fifty Dollars (\$50.00);

(4) Filing an application for withdrawal of a foreign business trust and issuing a certificate of withdrawal, Twenty-five Dollars (\$25.00);

(5) Filing any other statement or report of a foreign business trust, Twenty-five Dollars (\$25.00);

(6) For furnishing a certified copy of any document, instrument or paper relating to a foreign business trust, One Dollar (\$1.00) per page and Ten Dollars (\$10.00) for the certificate and affixing the seal thereto; and

(7) At the time of any service of process on him as resident agent of a foreign business trust, Twenty-five Dollars (\$25.00), which amount may be recovered as taxable cost by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

SOURCES: Laws, 1998, ch. 428, § 17; Laws, 2012, ch. 382, § 107, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote (1).

Cross References — Mississippi Registered Agents Act see §§ 79-35-1 et seq.

CHAPTER 29

Revised Mississippi Limited Liability Company Act

| | | |
|-------------|--|------------|
| Article 1. | General Provisions | 79-29-101 |
| Article 2. | Formation, Certificate of Formation | 79-29-201 |
| Article 3. | Members | 79-29-301 |
| Article 4. | Management | 79-29-401 |
| Article 5. | Finance | 79-29-501 |
| Article 6. | Distributions | 79-29-601 |
| Article 7. | Assignment of Financial Interests | 79-29-701 |
| Article 8. | Dissolution | 79-29-801 |
| Article 9. | Professional Limited Liability Companies | 79-29-901 |
| Article 10. | Foreign Limited Liability Companies | 79-29-1001 |
| Article 11. | Derivative Actions | 79-29-1101 |
| Article 12. | Miscellaneous | 79-29-1201 |
| Article 13. | Transition Provisions | 79-29-1301 |

Editor's Note — Laws of 2010, ch. 532, § 3, which repealed the Mississippi Limited Liability Company Act (codified in Chapter 29 of Title 79) effective from and after January 1, 2011, provides:

“SECTION 3. Sections 79-29-101, 79-29-102, 79-29-103, 79-29-104, 79-29-105, 79-29-106, 79-29-107, 79-29-108, 79-29-109, 79-29-110, 79-29-111, 79-29-112, 79-29-201, 79-29-202, 79-29-203, 79-29-204, 79-29-205, 79-29-206, 79-29-207, 79-29-208, 79-29-209, 79-29-210, 79-29-211, 79-29-212, 79-29-213, 79-29-214, 79-29-301, 79-29-302, 79-29-303, 79-29-304, 79-29-305, 79-29-306, 79-29-307, 79-29-308, 79-29-401, 79-29-402, 79-29-403, 79-29-501, 79-29-502, 79-29-503, 79-29-504, 79-29-601, 79-29-602, 79-29-603, 79-29-604, 79-29-605, 79-29-606, 79-29-701, 79-29-702, 79-29-703, 79-29-704, 79-29-705, 79-29-801, 79-29-802, 79-29-803, 79-29-804, 79-29-805, 79-29-806, 79-29-807, 79-29-901, 79-29-902, 79-29-903, 79-29-904, 79-29-905, 79-29-906, 79-29-907, 79-29-908, 79-29-909, 79-29-910, 79-29-911, 79-29-912, 79-29-913, 79-29-914, 79-29-915, 79-29-917, 79-29-918, 79-29-919, 79-29-920, 79-29-921, 79-29-922, 79-29-923, 79-29-924, 79-29-925, 79-29-926, 79-29-930, 79-29-931, 79-29-933, 79-29-1001,

79-29-1002, 79-29-1003, 79-29-1004, 79-29-1005, 79-29-1006, 79-29-1007, 79-29-1008, 79-29-1009, 79-29-1010, 79-29-1101, 79-29-1102, 79-29-1103, 79-29-1104, 79-29-1105, 79-29-1106, 79-29-1107, 79-29-1201, 79-29-1202, 79-29-1203 and 79-29-1204, Mississippi Code of 1972, which comprise the Mississippi Limited Liability Company Act, are hereby repealed.”

Former Chapter 29 of Title 79 contained the following Articles:

Article 1, which was entitled “General Provisions” and included former §§ 79-29-101 through 79-29-112 [Laws, 1994, ch. 402, §§ 1 through 12, effective from and after July 1, 1994].

Article 2, which was entitled “Formation, certificate of formation” and included former §§ 79-29-201 through 79-29-210 [Laws, 1994, ch. 402, §§ 13 through 21, effective from and after July 1, 1994] and former §§ 79-29-210 through 79-29-214 [Laws, 2000, ch. 469, §§ 45 through 49, effective from and after July 1, 2000].

Article 3, which was entitled “Members” and included former §§ 79-29-301 through 79-29-308 [Laws, 1994, ch. 402, §§ 22 through 29, effective from and after July 1, 1994].

Article 4, which was entitled “Management” and included former §§ 79-29-401 through 79-29-403 [Laws, 1994, ch. 402, §§ 30 through 32, effective from and after July 1, 1994].

Article 5, which was entitled “Finance” and included former §§ 79-29-501 through 79-29-504 [Laws, 1994, ch. 402, §§ 33 through 36, effective from and after July 1, 1994].

Article 6, which was entitled “Distributions” and included former §§ 79-29-601 through 79-29-606 [Laws, 1994, ch. 402, §§ 37 through 42, effective from and after July 1, 1994].

Article 7, which was entitled “Assignment of Limited Liability Company Interests” and included former §§ 79-29-701 through 79-29-705 [Laws, 1994, ch. 402, §§ 43 through 47, effective from and after July 1, 1994].

Article 8, which was entitled “Dissolution” and included former §§ 79-29-801 through 79-29-807 [Laws, 1994, ch. 402, §§ 48 through 54, effective from and after July 1, 1994].

Article 9, which was entitled “Professional Limited Liability Companies” and included former §§ 79-29-901 through 79-29-912 [Laws, 1994, ch. 402, § 55 through 66, effective from and after July 1, 1994] and former §§ 79-29-913 through 79-29-933 [Laws, 1995, ch. 494, §§ 48 through 63, eff from and after July 1, 1995].

Article 10, which was entitled “Foreign Limited Liability Companies” and included former §§ 79-29-1001 through 79-29-1010 [Laws, 1994, ch. 402, §§ 67 through 76, effective from and after July 1, 1994].

Article 11, which was entitled “Derivative Actions” and included former §§ 79-29-1101 through 1107 [Laws, 1994, ch. 402, §§ 77 through 83, effective from and after July 1, 1994].

Article 12, which was entitled ‘Miscellaneous’ and included former §§ 79-29-1201 through 79-29-1204 [Laws, 1994, ch. 402, §§ 84 through 87, effective from and after July 1, 1994].

Laws of 2010, ch. 532, § 1, effective from and after January 1, 2011, enacted a new Chapter 29 of Title 79, (§§ 79-29-101 through 79-29-1211) which contains similar provisions.

ARTICLE 1.

GENERAL PROVISIONS.

SEC.

79-29-101. Short title.

79-29-102. Repealed.

79-29-103. Reservation of power to amend or repeal.

- 79-29-105. Definitions.
- 79-29-106. Repealed.
- 79-29-107. Form of notice and written consents.
- 79-29-108. Repealed.
- 79-29-109. Name.
- 79-29-110. Repealed.
- 79-29-111. Reservation of name.
- 79-29-112. Repealed.
- 79-29-113. Registered office and registered agent [Repealed effective January 1, 2013].
- 79-29-115. Records to be kept.
- 79-29-117. Nature of business; powers.
- 79-29-119. Governing law.
- 79-29-121. Business transactions of member or manager with the limited liability company.
- 79-29-123. General standards of conduct and construction and application of certificate of formation and operating agreement; scope, function, and limitations.
- 79-29-125. Service on limited liability company [Repealed effective January 1, 2013].
- 79-29-127. Taxation.

§ 79-29-101. Short title.

This chapter shall be known and may be cited as the “Revised Mississippi Limited Liability Company Act.”

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor’s Note — A former § 79-29-101 [Laws, 1994, ch. 402, § 1, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the short title of the chapter. See Editor’s Note under Chapter 29 heading.

§ 79-29-102. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, eff from and after Jan. 1, 2011.

79-29-102. [Laws, 1994, ch. 402, § 2, eff from and after July 1, 1994.]

Editor’s Note — Former § 79-29-102 was entitled: Reservation of power to amend or repeal. For present similar provisions, see § 79-29-103.

§ 79-29-103. Reservation of power to amend or repeal.

Any provision of this chapter may be altered from time to time or repealed and all rights of members, managers and officers are subject to this reservation. Unless expressly stated to the contrary in this chapter, including Article 13, any amendment of this chapter shall apply to limited liability companies and members, managers and officers without regard to either the date of the formation of the limited liability company or the date of the enactment of the amendment.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-103 [Laws, 1994, ch. 402, § 3; Laws, 1995, ch. 494, § 64; Laws, 1997, ch. 418, § 25; Laws, 1998, ch. 376, § 4; Laws, 2000, ch. 469, § 42, eff from and after July 1, 2000; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] provided definitions of terms used in the chapter. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-105.

§ 79-29-104. Repealed.

Editor's Note — Former § 79-29-104 was entitled: Name. For present similar provisions, see § 79-29-109.

§ 79-29-105. Definitions.

As used in this chapter, unless the context otherwise requires:

(a) "Bankruptcy" means an event that causes a member to cease to be a member as provided in Section 79-29-313 of this chapter.

(b) "Certificate of formation" means the certificate referred to in Section 79-29-201, the certificate as amended or restated, and the certificate of merger. In the case of a foreign limited liability company, the term includes all documents serving a similar function that are required to be filed to form the limited liability company in the state or other jurisdiction where it is organized.

(c) "Contribution" means any cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in the person's capacity as a member.

(d) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission. If delivery is to the Secretary of State, delivery may be made by electronic transmission, if, to the extent, and in the manner permitted by the Secretary of State.

(e) "Derivative proceeding" means a civil suit in the right of a limited liability company or, to the extent provided in Article 10 of this chapter, in the right of a foreign limited liability company.

(f) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(g) "Entity" means any association or legal entity organized to conduct business, whether domestic or foreign, including, without limitation, for profit and nonprofit corporations, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint-stock companies, business trusts and estates; and states, the United States, foreign governments, governmental subdivisions or governmental agencies.

(h) "Financial interests" and "financial rights" means (i) rights to share in profits and losses as provided in Section 79-29-505; (ii) rights to share in

distributions as provided in Section 79-29-507; (iii) rights to receive interim distributions as provided in Section 79-29-601; (iv) rights to receive distributions upon withdrawal as provided in Section 79-29-603; (v) rights to receive allocations of income, loss, deduction, credit or similar items; (vi) appraisal rights as provided in Section 79-29-231; and (vii) any other rights granted in the certificate of formation or the operating agreement that are in addition to the above and are designated as “financial interests” or “financial rights” by the limited liability company. Financial interests may be owned by members of a limited liability company and may be owned by persons who are not members of a limited liability company. Financial interests are assignable in whole or in part, except as otherwise provided by a limited liability company’s certificate of formation or operating agreement.

(i) “Foreign,” with reference to any entity, means such entity that is formed or organized under laws other than the laws of this state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

(j) “Formation document” means the document that creates an entity which document is duly executed and delivered to a public official or office in the state or other foreign jurisdiction of the entity’s formation pursuant to the laws under which the entity is organized or formed.

(k) “Governance interests” or “governance rights” means all of a member’s rights as a member in the limited liability company other than financial rights and the right to assign financial rights, including without limitation: (i) the rights to participate in the management of the limited liability company; (ii) rights to bind the limited liability company as provided in Sections 79-29-307 and 79-29-811; (iii) the right to vote for or consent to matters requiring the vote of or consent of the members, as specified in this chapter or in the certificate of formation or operating agreement; and, unless the context otherwise requires; and (iv) rights to enjoy any privileges bestowed on members of the limited liability company. Only members shall have governance rights or own governance interests in a limited liability company.

(l) “Individual” means a natural person.

(m) “Interests” means the proprietary interests in an entity and, with respect to a member of a limited liability company, “interests” or “membership interests” are used interchangeably and shall each mean all of the governance interests and financial interests in the limited liability company held by such member or members.

(n) “Knowledge” means a person’s actual knowledge, rather than the person’s constructive knowledge.

(o) “Limited liability company” or “domestic limited liability company” means an entity having one or more members that is an unincorporated company or unincorporated association formed and existing under this chapter and is not subject to Section 97-13-15.

(p) “Manager” or “managers” means a person or persons who are named in or selected or designated pursuant to, the certificate of formation or

operating agreement as a manager to manage the limited liability company to the extent and as provided in the certificate of formation or operating agreement. A limited liability company whose management is vested in a manager or managers is referred to in this chapter as a manager-managed limited liability company.

(q) “Member” means a person who has been admitted to a limited liability company as provided in Section 79-29-301 or, in the case of a foreign limited liability company, in accordance with the laws under which the foreign limited liability company is organized. A member includes a member of a limited liability company who does not own a financial interest or who does not have an obligation to contribute capital to the limited liability company. A member may or may not have governance interests, including voting rights. A member may have other rights, powers or privileges as prescribed by the certificate of formation or the operating agreement. A limited liability company whose management is vested in the members is referred to in this chapter as a member-managed limited liability company.

(r) “Merger” means a business combination pursuant to Section 79-29-221.

(s) “Officer” means an individual who is named in or selected or designated pursuant to, the certificate of formation or operating agreement as an officer to manage the limited liability company to the extent and as provided in the certificate of formation or operating agreement.

(t) “Operating agreement” or “limited liability company agreement” means any agreement, whether referred to as a limited liability company agreement or otherwise, written, oral or implied, of the member or members as to the affairs of a limited liability company and the conduct of its business. A member or manager of a limited liability company or an assignee of a financial interest is bound by the operating agreement whether or not the member or manager or assignee executes the operating agreement. A limited liability company is not required to execute its operating agreement. A limited liability company is bound by its operating agreement whether or not the limited liability company executes the operating agreement. An operating agreement of a limited liability company having only one (1) member shall not be unenforceable by reason of there being only one (1) person who is a party to the operating agreement. An operating agreement may provide rights to any person, including a person who is not a party to the operating agreement, to the extent set forth therein. A written operating agreement or another written agreement or writing:

(i) May provide that a person shall be admitted as a member of a limited liability company, or, shall become an assignee of a financial interest or of other rights or powers of a member to the extent assigned:

1. If the person, or a representative authorized by the person orally, in writing or by other action such as payment for a financial interest, executes the operating agreement or any other writing evidencing the intent of the person to become a member or assignee; or

2. Without such execution, if such person, or a representative authorized by such person orally, in writing or by other action such as

payment for a financial interest, complies with the conditions for becoming a member or assignee as set forth in the operating agreement or any other writing; and

(ii) Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in paragraph (t)(i) of this subsection, or by reason of its having been signed by a representative as provided in this chapter.

(u) “Organizational documents” means the document or documents that create, or determine the internal governance of, an entity. The organizational documents of a limited liability company are the certificate of formation and the operating agreement, if any.

(v) “Person” means an individual, entity, trust, or any other legal or commercial nominee or any personal representative.

(w) “Personal representative” means, as to an individual, the executor, administrator, guardian, conservator or other legal representative thereof or the successor of such executor, administrator, guardian, conservator or legal representative; and, as to a person other than an individual, the legal representative or the successor of the legal representative. The legal representative of a member which has been placed in bankruptcy shall be the bankruptcy trustee or other representative designated in accordance with the bankruptcy code.

(x) “Professional limited liability company” is a limited liability company formed and existing under Article 9 of this chapter.

(y) “Sign” or “signature” includes any manual, facsimile, conformed or electronic signature.

(z) “State” means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States.

(aa) “Survivor” of a merger means the entity into which one or more entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

(bb) “Withdraw” or “withdrawal” means, with respect to a member of a limited liability company, any voluntary act by which, pursuant to the certificate of formation or written operating agreement, a member ceases to be a member of the limited liability company and ceases to have any governance rights. Withdrawal shall include retirement, resignation or withdrawal, but shall not include the death or expulsion of a member, any event described in Section 79-29-313, or the assignment of the member’s entire interest as provided in Section 79-29-703. Any use of the term “resignation” or “retirement” in an operating agreement or certificate of formation, with respect to a member which is not defined in such document, shall mean the withdrawal of the member from the limited liability company for purposes of this chapter.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-105 [Laws, 1994, ch. 402, § 5; Laws, 1997, ch. 418 § 27, eff from and after July 1, 1997; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the reservation of the exclusive right to the use of a name. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-111.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (t)(ii) was corrected by substituting "paragraph (t)(i) of this subsection" for "subsection (t)(i) of this subsection."

§ 79-29-106. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-106. [Laws, 1994, ch. 402, § 6; Laws, 1997, ch. 418, § 28, eff from and after July 1, 1997.]

Editor's Note — Former § 79-29-106 was entitled: Registered office and registered agent. For present similar provisions, see § 79-29-113.

§ 79-29-107. Form of notice and written consents.

(1) Notice under this chapter shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(2) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail, email or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

(3) Electronically transmitted written notice by a limited liability company to its members or managers, if in a comprehensible form, is effective when electronically transmitted to the member or manager in a manner authorized by the member or manager, as applicable.

(4) Written notice that is not electronically transmitted by a limited liability company to its members or managers, if in a comprehensible form, is effective at the earliest of the following:

(a) When received;

(b) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed to the recipients shown in the limited liability company's current list of members and managers;

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(5) Oral notice is effective when communicated if communicated in a comprehensible manner.

(6) Any notice permitted or required to be made under this chapter or under the operating agreement may be waived at any time.

(7) A consent transmitted by electronic transmission by a person or by a person authorized to act for the person shall be deemed to be written and signed for purposes of this chapter.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-107 [Laws, 1994, ch. 402, § 7, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to records that were to be kept by a limited liability company. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-115.

§ 79-29-108. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.
§ 79-29-108. [Laws, 1994, ch. 402, § 8, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-108 was entitled: Nature of business; powers. For present similar provisions, see § 79-29-117.

§ 79-29-109. Name.

(1) The name of each limited liability company as set forth in its certificate of formation:

(a) Must contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC";

(b) May contain the name of a member or manager;

(c) Except as authorized by subsection (3) of this section, must be distinguishable upon the records of the Secretary of State from (i) the name of any domestic or foreign corporation, nonprofit corporation, limited partnership, limited liability partnership or limited liability company that is organized or registered under the laws of this state and which has not been dissolved; and (ii) a name that is reserved or registered in the Office of the Secretary of State for any of the entities named in paragraph (1)(c)(i) of this section which reservation or registration has not expired; and

(d) May not contain the following words: "bank," "banker," "bankers," "banking," "trust company," "insurance," "trust," "corporation," "incorporated," "partnership," "limited partnership," or any combination or abbreviation thereof, or any words or abbreviations of similar import.

(2) The Secretary of State shall reject any certificate of formation that does not comply with subsection (1) of this section.

(3) A limited liability company may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the records in the Office of the Secretary of State from one or more of the names described in subsection (1)(c) of this section. The Secretary of State shall authorize the use of the name applied for if:

(a) The other domestic or foreign limited liability company, limited partnership, limited liability partnership, corporation or nonprofit corporation consents to the use in writing and submits an undertaking in form

satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or

(b) The applicant delivers to the Office of the Secretary of State for filing a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-109 [Laws, 1994, ch. 402, § 9, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the business transactions of a member or manager with the limited liability company. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-121.

§ 79-29-110. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-110. [Laws, 1994, ch. 402, § 10, eff from and after July 1, 1994.]

§ 79-29-111. Reservation of name.

(1) The right to the use of a legal name under Section 79-29-109 may be reserved by:

(a) A person intending to organize a limited liability company under this chapter and to adopt that name;

(b) A domestic limited liability company or any foreign limited liability company registered in this state which, in either case, intends to adopt that name;

(c) A foreign limited liability company intending to register in this state and adopt that name; and

(d) A person intending to organize a foreign limited liability company and intending to have it registered in this state and adopt that name.

(2) The reservation shall be made by delivering to the Office of the Secretary of State for filing an application, signed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use as a legal name by a domestic or foreign limited liability company, the Secretary of State shall reserve the name for the exclusive use of the applicant as a legal name for a period of one hundred eighty (180) days. Once having so reserved a name, the same applicant may not again reserve the same name until more than sixty (60) days after the expiration of the last one-hundred-eighty-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by delivering to the Office of the Secretary of State a notice of the transfer, signed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(3) The reservation of a specified name may be cancelled by delivering to the Office of the Secretary of State a notice of cancellation, specifying the name

reservation to be cancelled and the name and address of the applicant or transferee.

(4) Unless the Secretary of State finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of State as required by this section does not conform to law, upon receipt of all filing fees required by law the Secretary shall prepare and return to the person who filed the instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State.

(5) A fee as set forth in Section 79-29-1203 of this chapter shall be paid at the time of the reservation of any name and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-111 [Laws, 1994, ch. 402, § 11, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to service on a limited liability company. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-125.

§ 79-29-112. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-112. [Laws, 1994, ch. 402, § 12, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-112 was entitled: Taxation. For present similar provisions, see § 79-29-127.

§ 79-29-113. Registered office and registered agent [Repealed effective January 1, 2013].

(1) Each limited liability company must continuously maintain in this state:

(a) A registered office which may be the same as any of its places of business; and

(b) A registered agent for service of process on the limited liability company, which agent must be either an individual resident of this state, a domestic corporation, nonprofit corporation or limited liability company or a foreign corporation, nonprofit corporation or limited liability company authorized to transact business in this state, in each case whose business office is identical with the registered office.

(2) A limited liability company may change its registered office or registered agent by delivering to the Office of the Secretary of State for filing a certificate that sets forth:

(a) The name of the limited liability company;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of the new registered office;

(d) The name of its current registered agent;

(e) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the certificate or a statement attached to it, to the appointment; and

f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(3) A registered agent may change its address to another address in this state by delivering to the Office of the Secretary of State for filing a certificate, signed by the registered agent, setting forth: (a) the names of all the limited liability companies represented by the registered agent, (b) the address at which the registered agent has maintained its office for each of such limited liability companies, and (c) its new address which the registered agent will thereafter maintain for each of the limited liability companies recited in the certificate.

Upon filing this certificate, the Secretary of State will deliver to the registered agent a certified copy of the same and thereafter, or until further change of address, as authorized by law, the registered office of each of the limited liability companies recited in the certificate shall be located at the new address of the registered agent as given in the certificate. The filing by the Secretary of State of the certificate shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby. Any registered agent delivering a certificate to the Office of the Secretary of State under this section shall promptly, upon filing by the Secretary of State, deliver a copy of any such certificate to each limited liability company affected thereby.

(4) The registered agent of one or more limited liability companies may resign its agency appointment by delivering a certificate to the Office of the Secretary of State for filing stating that it resigns as registered agent for the limited liability companies identified in the certificate, but the resignation shall not become effective until ninety (90) days after the certificate is filed by the Secretary of State. There shall be attached to the certificate an affidavit of the registered agent that at least thirty (30) days prior to the filing of the certificate notices were sent by certified or registered mail to each limited liability company for which the registered agent is resigning as registered agent of the resignation of the registered agent. This notice shall be delivered to the last known principal office of each limited liability company identified in the certificate. After receipt of the notice of resignation of its registered agent, the limited liability company for which the registered agent was acting shall obtain and designate a new registered agent. After the resignation of the registered agent has become effective, if the limited liability company fails to obtain and designate a new registered agent, service of legal process against the limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with Section 79-29-125(2).

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — Laws of 2012, ch. 382, § 143, effective January 1, 2013, provides:

“SECTION 143. Section 79-29-113, Mississippi Code of 1972, which requires that a limited liability company maintain a registered office and registered agent within the state, is repealed.”

§ 79-29-115. Records to be kept.

(1) Each limited liability company shall keep at its principal place of business the following: (a) a current list of the full name and last known street address of each member and manager; (b) a copy of the certificate of formation, together with executed copies of any powers of attorney pursuant to which any certificate has been executed; (c) copies of any then effective operating agreement; and (d) unless contained in the certificate of formation or the operating agreement, a writing setting out: (i) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute; (ii) the times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made; and (iii) any events upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

(2) The failure of the limited liability company to maintain the foregoing required records shall not, for this reason, cause any member to be liable for any debt, obligation or liability of the limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-117. Nature of business; powers.

(1) Subject to the provisions of its certificate of formation or the operating agreement and subject to any other laws of this state which govern or limit the conduct of a particular business or activity, a limited liability company may carry on any lawful business, purpose or activity.

(2) Every limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Cross References — Applicability of this section to foreign limited liability company, see § 79-29-1001.

§ 79-29-119. Governing law.

The law of this state governs:

- (a) The internal affairs of a limited liability company; and
- (b) The liability of a member as member, a manager as manager and an officer as officer for the debts, obligations, or other liabilities of a limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-121. Business transactions of member or manager with the limited liability company.

A member or manager may lend money to and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member or manager.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-123. General standards of conduct and construction and application of certificate of formation and operating agreement; scope, function, and limitations.

(1) An operating agreement must initially be agreed to by all of the members. Except as otherwise provided in subsections (2) and (3) of this section, the certificate of formation or operating agreement governs:

(a) The affairs of a limited liability company, the conduct of its business and the relations of its members among the members as members and between the members and the limited liability company;

(b) The rights, powers and duties under this chapter of a person in the capacity of member, manager, officer or other person who is a party to or is otherwise bound by the operating agreement;

(c) The activities of the limited liability company and the conduct of those activities; and

(d) The means and conditions for amending the operating agreement.

(2) To the extent that: (a) the provisions of the operating agreement are not inconsistent with the certificate of formation, the operating agreement governs the matters described in paragraphs (a) through (d) of subsection (1) of this section; (b) the certificate of formation or operating agreement does not provide for the method by which an operating agreement may be amended, then all of the members must agree to any amendment of an operating agreement, except an amendment that occurs as the result of a merger with a domestic or foreign limited liability company must be approved by a majority of the members; and (c) the certificate of formation or operating agreement does not otherwise provide for a matter described in paragraphs (a) through (d) of subsection (1) of this section, this chapter governs the matter.

(3) Except as provided in this subsection (3), the provisions of this chapter that relate to the matters described in paragraphs (a) through (d) of subsection (1) of this section may be waived, restricted, limited, eliminated or varied by the certificate of formation or operating agreement. In addition to the restrictions set forth in subsections (4) and (5) of this section, the certificate of formation or the operating agreement may not:

(a) Vary the requirement set forth in subsection (1) of this section that the initial operating agreement must be agreed to by all of the members;

(b) Vary a limited liability company's capacity to sue and be sued in its own name;

- (c) Vary the law applicable under Section 79-29-119;
- (d) Vary the power of the court under Section 79-29-209;
- (e) Restrict the right to approve a merger under Section 79-29-223(e) to a member who will have personal liability with respect to a survivor;

(f) Restrict the right to approve an asset sale agreement under Section 79-29-233(e) to a member who will have personal liability with respect to any entity;

(g) Eliminate the implied contractual covenant of good faith and fair dealing of a member, manager, officer or other person who is a party to the operating agreement or who is otherwise bound by the operating agreement;

(h) Unreasonably restrict the duties and rights stated in Section 79-29-315;

(i) Waive the requirement of Section 79-29-503(1) that a contribution obligation be in writing;

(j) Vary the requirement to wind-up a limited liability company's business following the filing of a certificate of dissolution as specified in Section 79-29-801;

(k) Vary the manner of the distribution of assets in connection with the winding-up of a limited liability company's business as required by Section 79-29-813(1)(a);

(l) Vary the power of a court to decree dissolution in the circumstances specified in Section 79-29-803(1) or to appoint trustees or receivers as specified in Section 79-29-815;

(m) Vary the requirements of Sections 79-29-817 and 79-29-819;

(n) Vary or modify any provision of Article 9 of this chapter unless otherwise expressly provided in Article 9 that the certificate of formation or the operating agreement may vary or modify such provision;

(o) Unreasonably restrict the right of a member to maintain an action under Article 11 of this chapter;

(p) Vary any requirement set forth in this chapter that an agreement must be contained in either the certificate of formation or a written operating agreement to be enforceable; or

(q) Vary any provision set forth in this chapter relating to filing, fees or any action with or by the Secretary of State's office.

(4) The certificate of formation or an operating agreement may provide for the limitation or elimination of any and all liabilities of any manager, member, officer or other person who is a party to or is otherwise bound by the operating agreement for any action taken, or failure to take any action, as a manager or member or other person, including, for breach of contract and for breach of duties, including all or any fiduciary duties, of a member, manager, officer or other person to a limited liability company or to its members or to another member or manager or officer or to another person; provided, that the certificate of formation or an operating agreement may not limit or eliminate liability for:

(a) The amount of a financial benefit by a member or manager to which the member or manager is not entitled;

(b) An intentional infliction of harm on the limited liability company or the members;

(c) An intentional violation of criminal law;

(d) A violation of Section 79-29-611;

(e) The amount of a distribution in violation of Section 79-29-813(1); or

(f) Any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(5) Indemnification. (a) A limited liability company may, and shall have the power to, indemnify and hold harmless any member, manager, officer or other person from and against any and all claims and demands whatsoever, except a limited liability company and an operating agreement shall not indemnify any member, manager, officer or other person from and against any claims or demands in connection with a proceeding by or in the right of the limited liability company in which the member, manager or other person was:

(a) (i) Found to have engaged in acts or omissions that constitute fraudulent conduct and was adjudged liable for claims based on such conduct; or

(ii) Was found to have engaged in any actions described in subsection (4) of this section and was adjudged liable for claims based on such actions.

(b) A limited liability company shall indemnify a member, manager, officer or other person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a member, manager, officer or agent of the limited liability company against reasonable expenses incurred by the member, manager, officer or agent in connection with the proceeding.

(c) Each such indemnity may continue as to a person who has ceased to have the capacity referred to in subsection (5)(a) of this section and may inure to the benefit of the heirs, beneficiaries and personal representatives of such person.

(6) General standards of conduct. Subject to the certificate of formation or the terms of a written operating agreement or other written agreement, which may expand, eliminate or restrict the following, except as provided in subsection (4)(f) of this section,

(a) A manager:

(i) Shall discharge the duties of a manager;

1. In good faith and with fair dealing;

2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

3. In a manner the manager reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as a manager, or any failure to take any action, if such manager performed the duties of such manager in compliance with subsection (6)(a)(i) of this section.

2. For breach of fiduciary duty for the manager's good faith reliance on the provisions of the operating agreement.

(b) An officer:

(i) Shall discharge the duties of an officer;

1. In good faith and with fair dealing;

2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

3. In a manner the officer reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as an officer, or any failure to take any action, if such officer performed the duties of such member in compliance with subsection (6)(b)(i) of this section; and

2. For breach of fiduciary duty for the officer's good faith reliance on the provisions of the operating agreement.

(c) A member of a member-managed limited liability company:

(i) Shall discharge the duties of a member of a member-managed limited liability company;

1. In good faith and with fair dealing;

2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

3. In a manner the person reasonably believes to be in the best interests of the limited liability company.

(ii) Shall not be liable to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement for the following:

1. For any action taken as a member of a member-managed limited liability company, or any failure to take any action, if such member performed the duties of such member in compliance with subsection (6)(c)(i) of this section.

2. For breach of fiduciary duty for the member's good faith reliance on the provisions of the operating agreement.

(d) To the extent that, at law or in equity, a member of a manager-managed limited liability company or other person has duties, including fiduciary duties set forth in this chapter, to a limited liability company or to another member or manager or to another person who is a party to or is otherwise bound by an operating agreement, such member's or other person's fiduciary duties may be expanded, restricted or eliminated by provisions in the certificate of formation or the written operating agreement.

(e) The operating agreement may:

(i) Identify specific categories of activities that do not violate the duty of loyalty;

(ii) Alter or eliminate any other fiduciary duty, including eliminating particular aspects of that duty; and

(iii) If not manifestly unreasonable, prescribe the standards by which to measure the performance of the implied contractual covenant of good faith and fair dealing under Section 79-29-123(3)(g).

(7) Any agreement relating to or governing any event, act, omission, duty, right, power or liability under or pursuant to the following sections of this chapter must be expressly contained in either the certificate of formation or a written operating agreement in order to be enforceable:

- (a) Section 79-29-123(4);
- (b) Section 79-29-123(6);
- (c) Section 79-29-231;
- (d) Section 79-29-301(6);
- (e) Section 79-29-303;
- (f) Section 79-29-309;
- (g) Section 79-29-313(1);
- (h) Section 79-29-801; and
- (i) Section 79-29-1211.

(8) A court of equity:

(a) May enforce an operating agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances or, when the provisions of Section 79-29-803 are applicable, the court may order dissolution of the limited liability company; and

(b) Shall decide any claim under subsection (6)(e)(iii) of this section that such standard is manifestly unreasonable. The court:

(i) Shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(ii) May invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

- 1. The objective of the term is unreasonable; or
- 2. The term is an unreasonable means to achieve the provision's objective.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (2)(a) was corrected by substituting "paragraphs (a) through (d) of subsection (1) of this section" for "subsections (a) through (d) of subsection (1) of this section."

§ 79-29-125. Service on limited liability company [Repealed effective January 1, 2013].

(1) A limited liability company's registered agent is the limited liability company's agent for service of process, notice or demand required or permitted by law to be served on the limited liability company.

(2) If a limited liability company has no registered agent, or the agent cannot with reasonable diligence be served, service of legal process against the

limited liability company shall be upon the Secretary of State in accordance with the Rules of Civil Procedure of this state. Service is perfected under this subsection at the earliest of:

- (a) The date the limited liability company receives the mail;
- (b) The date shown on the return receipt, if signed on behalf of the limited liability company; or
- (c) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

(3) This section does not prescribe the only means, or necessarily the required means, of serving a limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — Laws of 2012, ch. 382, § 144, effective January 1, 2013, provides:

“SECTION 144. Section 79-29-125, Mississippi Code of 1972, which provides for service of process upon a limited liability company, is repealed.”

Cross References — Service of written notice of determination that ground(s) exists under § 79-29-821 for administratively dissolving a limited liability company may be by first class mail, see § 79-29-823.

Service of copy of certificate of administrative dissolution may be by first class mail, see § 79-29-823.

Service of copy of certificate of reinstatement may be by first class mail, see § 79-29-825.

Service of a record that explains the reason(s) for denial of reinstatement after administrative dissolution may be by first class mail, see § 79-29-827.

Service of written notice of determination that ground(s) exists under § 79-29-1021 for administratively dissolving a foreign limited liability company may be by first class mail, see § 79-29-1023.

Service on foreign limited liability company of copy of certificate of administrative dissolution may be by first class mail, see § 79-29-1023

Service on foreign limited liability company of copy of certificate of reinstatement may be by first class mail, see § 79-29-1025.

§ 79-29-127. Taxation.

Domestic limited liability companies and foreign limited liability companies shall be classified as an entity for purposes of the income tax laws of this state in the same manner as they are classified for federal income tax purposes.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Cross References — Mississippi income tax laws generally, see §§ 27-7-1 et seq.

ARTICLE 2.

FORMATION, CERTIFICATE OF FORMATION.

SEC.

79-29-201. Certificate of formation.

79-29-202. Repealed.

79-29-203. Amendment to or restatement of certificate.

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|------------|---|
| 79-29-204. | Repealed. |
| 79-29-205. | Certificate of dissolution. |
| 79-29-206. | Repealed. |
| 79-29-207. | Signing of certificate. |
| 79-29-208. | Repealed. |
| 79-29-209. | Amendment or dissolution by judicial act. |
| 79-29-210. | Repealed. |
| 79-29-211. | Filing with the Secretary of State. |
| 79-29-212. | Repealed. |
| 79-29-213. | Correction of filings made with the Secretary of State. |
| 79-29-214. | Repealed. |
| 79-29-215. | Annual report for Secretary of State. |
| 79-29-217. | Notice. |
| 79-29-219. | Certificate of existence. |
| 79-29-221. | Merger of limited liability company. |
| 79-29-223. | Action on an agreement of merger. |
| 79-29-225. | Certificate of merger. |
| 79-29-227. | Effect of merger. |
| 79-29-229. | Abandonment of a merger. |
| 79-29-231. | Appraisal rights. |
| 79-29-233. | Action on an agreement to sell, lease, exchange or otherwise dispose of assets. |

§ 79-29-201. Certificate of formation.

[Effective until January 1, 2013, this section will read:]

(1) In order to form a limited liability company, a certificate of formation must be signed and delivered to the Office of the Secretary of State. The certificate must set forth:

(a) The name of the limited liability company;

(b) The street and mailing address of the registered office and the name and the street and mailing address of the registered agent for service of process, required to be maintained by Section 79-29-113; and

(c) If the limited liability company is to have a specific date of dissolution, the latest date upon which the limited liability company is to dissolve.

(2) The certificate of formation may set forth any other matters the members determine to include therein.

(3) A limited liability company is formed at the date and time of the filing of the certificate of formation by the Secretary of State, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, or at any later date or time specified in the certificate of formation if, in either case, the certificate of formation so filed substantially complies with the requirements of this chapter. A delayed effective date specified in a certificate of formation may not be later than the ninetieth day after the date and time it is filed by the Secretary of State.

(4) For all purposes, a copy of the certificate of formation duly certified by the Secretary of State is conclusive evidence of the formation of a limited liability company and prima facie evidence of its existence.

[Effective from and after January 1, 2013, this section will read:]

(1) In order to form a limited liability company, a certificate of formation must be signed and delivered to the Office of the Secretary of State. The certificate must set forth:

- (a) The name of the limited liability company;
- (b) The information required by Section 79-35-5(a); and
- (c) If the limited liability company is to have a specific date of dissolution, the latest date upon which the limited liability company is to dissolve.

(2) The certificate of formation may set forth any other matters the members determine to include therein.

(3) A limited liability company is formed at the date and time of the filing of the certificate of formation by the Secretary of State, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, or at any later date or time specified in the certificate of formation if, in either case, the certificate of formation so filed substantially complies with the requirements of this chapter. A delayed effective date specified in a certificate of formation may not be later than the ninetieth day after the date and time it is filed by the Secretary of State.

(4) For all purposes, a copy of the certificate of formation duly certified by the Secretary of State is conclusive evidence of the formation of a limited liability company and prima facie evidence of its existence.

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 108, eff from and after Jan. 1, 2013.

Editor's Note — A former § 79-29-201 [Laws, 1994, ch. 402, § 13; Laws, 1997, ch. 418, § 29, eff from and after July 1, 1997; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the certificate of formation. See Editor's Note under Chapter 29 heading.

Amendment Notes — The 2012 amendment rewrote (1)(b).

§ 79-29-202. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-202. [Laws, 1994, ch. 402, § 14; Laws, 1997, ch. 418, § 30; Laws, 2000, ch. 469, § 43, eff from and after July 1, 2000.]

Editor's Note — Former § 79-29-202 was entitled: Amendment to certificate. For present similar provisions, see § 79-29-203.

§ 79-29-203. Amendment to or restatement of certificate.

(1) A certificate of formation is amended or restated by delivering a certificate of amendment thereto to the Office of the Secretary of State for filing. The certificate shall set forth:

- (a) The name of the limited liability company;
- (b) The future effective date of the amendment or restatement, which must be a date certain not later than the ninetieth day after the date it is filed by the Secretary of State, unless it is effective upon the filing of the certificate of amendment; and

(c) The amendment to or restatement of the certificate.

(2) A certificate of formation may be amended or restated at any time for any other proper purpose.

(3) All members must agree to any amendment to or restatement of the certificate of formation.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-203 [Laws, 1994, ch. 402, § 15; Laws, 1997, ch. 418, § 31, eff from and after July 1, 1997; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to restated certificates of formation. See Editor's Note under Chapter 29 heading.

§ 79-29-204. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-204. [Laws, 1994, ch. 402, § 16; Laws, 1997, ch. 418, § 32, eff from and after July 1, 1997.]

Editor's Note — Former § 79-29-204 was entitled: Certificates of dissolution and cancellation. For present similar provisions, see § 79-29-205.

§ 79-29-205. Certificate of dissolution.

(1) A certificate of dissolution must be delivered to the Office of the Secretary of State for filing upon commencement of winding-up of the limited liability company in connection with the dissolution of the limited liability company pursuant to Article 8 of this chapter. A certificate of dissolution must be delivered to the Office of the Secretary of State for filing and must set forth:

(a) The name of the limited liability company;

(b) The future effective date of dissolution, which must be a date certain not later than the ninetieth day after it is filed by the Secretary of State, unless it is effective upon the filing of the certificate; and

(c) Any other information the person delivering the certificate for filing determines.

(2) The Secretary of State shall not issue a certificate of existence with respect to a limited liability company after the effective date of the certificate of dissolution of such limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-205 [Laws, 1994, ch. 402, § 17; Laws, 1995, ch. 362, § 10; Laws, 1997, ch. 418, § 33, eff from and after July 1, 1997; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the signing of certificates. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-207.

Cross References — Disposition of known claims against dissolved limited liability company by filing certificate of dissolution pursuant to this section, see § 79-29-817.

§ 79-29-206. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-206. [Laws, 1994, ch. 402, § 18; Laws, 1997, ch. 418, § 34, eff from and after July 1, 1997.]

Editor's Note — Former § 79-29-206 was entitled: Amendment, dissolution or cancellation by judicial act. For present similar provisions, see § 79-29-209.

§ 79-29-207. Signing of certificate.

(1) Unless otherwise specified in any other section of this chapter, any document required by this chapter to be delivered to the Office of the Secretary of State for filing shall be signed by any one or more authorized persons.

(2) The person signing the document shall state the person's name beneath or opposite the person's signature, the capacity in which the person signs and the person's street and mailing address. A document required or permitted to be delivered to the Office of the Secretary of State for filing under this chapter which contains a copy of a signature, however made, is acceptable for filing by the Secretary of State.

(3) Any person may sign a certificate, an operating agreement or any amendment to either by an agent, including an attorney-in-fact.

(4) A person commits an offense if the person signs a document with the knowledge that it is false in any material respect with intent that the document be delivered to the Office of the Secretary of State for filing. An offense under this provision is a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00).

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-207 [Laws, 1994, ch. 402, § 19; Laws, 1995, ch. 362, § 11; Laws, 1997, ch. 418, § 35, eff from and after July 1, 1997; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the filing of certificates with the Secretary of State. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-211.

Cross References — Applicability of subsection (4) of this section to foreign limited liability companies, see § 79-29-1019

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 79-29-208. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-208. [Laws, 1994, ch. 402, § 20, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-208 was entitled: Notice. For present similar provisions, see § 79-29-217.

§ 79-29-209. Amendment or dissolution by judicial act.

[Effective until January 1, 2013, this section will read:]

If a person required by this Article 2 to sign a certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the chancery court of the county in which the principal office (or, if none in this state, the registered office) of the limited liability company is located to direct the signing of the certificate. If the court finds that it is proper for the certificate to be signed and that any person so designated has failed or refused to sign the certificate, it shall order appropriate relief, including an order to the Secretary of State to file an appropriate certificate.

[Effective from and after January 1, 2013, this section will read:]

If a person required by this Article 2 to sign a certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the chancery court of the county in which the principal office is located or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the limited liability company does not have a principal office in this state to direct the signing of the certificate. If the court finds that it is proper for the certificate to be signed and that any person so designated has failed or refused to sign the certificate, it shall order appropriate relief, including an order to the Secretary of State to file an appropriate certificate.

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 109, eff from and after Jan. 1, 2013.

Editor's Note — A former § 79-29-209 [Laws, 1994, ch. 402, § 21; Laws, 1997, ch. 418, § 36; Laws, 2000, ch. 469, § 44, eff from and after July 1, 2000; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the merger of a limited liability company. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-221.

Amendment Notes — The 2012 amendment rewrote the first sentence.

§ 79-29-210. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.
§ 79-29-210. [Laws, 2000, ch. 469, § 45, eff from and after July 1, 2000.]

Editor's Note — Former § 79-29-210 was entitled: Action on a plan of merger. For present similar provisions, see § 79-29-223.

§ 79-29-211. Filing with the Secretary of State.

[Effective until January 1, 2013, this section will read:]

(1) The certificate of formation and any certificate of amendment, dissolution, correction or merger and any restated certificate or any judicial decree of amendment, dissolution or merger or restated certificate and any certificate filed by the Secretary of State pursuant to Section 79-29-113 must be delivered to the Office of the Secretary of State. A person who signs a certificate as an

agent or fiduciary need not exhibit evidence of the person's authority as a prerequisite to filing by the Secretary of State. Unless the Secretary of State finds that a certificate is not acceptable for filing, upon receipt of all filing fees required by Section 79-29-1203 and delivery of the certificate the Secretary of State shall:

(a) Certify that the certificate has been filed in the Secretary of State's office by endorsing upon the signed certificate the word "Filed" and the date and time of the filing. This endorsement is conclusive evidence of the date and time of its filing in absence of actual fraud;

(b) File the certificate; and

(c) Return a copy to the person who delivered it for filing or that person's representative with an acknowledgment of the date and time of filing.

(2) Upon the filing of a certificate of amendment or judicial decree of amendment, certificate of correction or an amended and restated certificate by the Secretary of State or upon the future effective date of a certificate of amendment (or judicial decree thereof) or an amended and restated certificate, as provided for therein, the certificate of formation shall be amended, corrected or restated as set forth therein. Upon the filing of a certificate of dissolution (or a judicial decree thereof) by the Secretary of State or upon the future effective date of a certificate of dissolution (or a judicial decree thereof), the certificate of formation is dissolved.

(3) Each certificate delivered to the Office of the Secretary of State for filing must be typewritten or printed, or, if electronically transmitted, it must be in a format that can be retrieved or reproduced by the Secretary of State in typewritten or printed form, and must be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals.

(4) Refused documents shall be returned by the Secretary of State to the limited liability company or its representative within ten (10) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(a) If the Secretary of State refuses to file a document, the limited liability company may appeal the refusal to the chancery court of the county where the limited liability company's principal office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

(5) A certificate from the Secretary of State delivered with a copy of the document filed by the Secretary of State is conclusive evidence that the original document is on file with the Secretary of State.

[Effective from and after January 1, 2013, this section will read:]

(1) The certificate of formation and any certificate of amendment, dissolution, correction or merger and any restated certificate must be delivered to the Office of the Secretary of State. A person who signs a certificate as an agent or fiduciary need not exhibit evidence of the person's authority as a prerequisite to filing by the Secretary of State. Unless the Secretary of State finds that a certificate is not acceptable for filing, upon receipt of all filing fees required by Section 79-29-1203 and delivery of the certificate the Secretary of State shall:

(a) Certify that the certificate has been filed in the Secretary of State's office by endorsing upon the signed certificate the word "Filed" and the date and time of the filing. This endorsement is conclusive evidence of the date and time of its filing in absence of actual fraud;

(b) File the certificate; and

(c) Return a copy to the person who delivered it for filing or that person's representative with an acknowledgment of the date and time of filing.

(2) Upon the filing of a certificate of amendment or upon the future effective date of a certificate of amendment (or judicial decree thereof) or an amended and restated certificate, as provided for therein, the certificate of formation shall be amended, corrected or restated as set forth therein. Upon the filing of a certificate of dissolution (or a judicial decree thereof) by the Secretary of State or upon the future effective date of a certificate of dissolution (or a judicial decree thereof), the certificate of formation is dissolved.

(3) Each certificate delivered to the Office of the Secretary of State for filing must be typewritten or printed, or, if electronically transmitted, it must be in a format that can be retrieved or reproduced by the Secretary of State in typewritten or printed form, and must be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals.

(4) Refused documents shall be returned by the Secretary of State to the limited liability company or its representative within ten (10) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(a) If the Secretary of State refuses to file a document, the limited liability company may appeal the refusal to the chancery court of the county where the limited liability company's principal office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

(5) A certificate from the Secretary of State delivered with a copy of the document filed by the Secretary of State is conclusive evidence that the original document is on file with the Secretary of State.

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 110, eff from and after Jan. 1, 2013.

Editor's Note — A former § 79-29-211 [Laws, 2000, ch. 469, § 46, eff from and after July 1, 2000; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to certificates of merger. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-225.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in the first sentence of (1) was corrected by deleting the word "of" following "The certificate of formation and" and following "or merger and any restated certificate or."

Amendment Notes — The 2012 amendment deleted "and any certificate filed by the Secretary of State pursuant to Section 79-29-113" following "restated certificate" in the first sentence of (1); and deleted "or judicial decree of amendment, certificate of correction or an amended and restated certificate by the Secretary of State" preceding "upon the future effective date" in the first sentence of (2).

§ 79-29-212. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-212. [Laws, 2000, ch. 469, § 47, eff from and after July 1, 2000.]

Editor's Note — Former § 79-29-212 was entitled: Effect of merger. For present similar provisions, see § 79-29-227.

§ 79-29-213. Correction of filings made with the Secretary of State.

In the event that a manager or member becomes aware that any statement in a certificate of formation or any other filing was false or inaccurate when made, or that such filing was defectively or erroneously executed, such member or manager shall then promptly take one (1) of the following actions, as applicable, to correct such filing or certificate:

(a) If the correction is to be made within one (1) year of the date of the filing to be corrected, then the certificate may be corrected by filing a certificate of correction of the certificate with the Office of the Secretary of State. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form, and shall be executed and filed as required by this chapter. The certificate of correction shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the certificate of correction shall be effective from the filing date; or

(b) If the correction is to be made after one (1) year of the date of the filing to be corrected then the person shall correct the certificate or filing by filing a certificate of amendment as provided by Section 79-29-203. Any amendment made pursuant to this subsection (b) shall be effective upon the filing of the certificate of amendment.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-213 [Laws, 2000, ch. 469, § 48, eff from and after July 1, 2000; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to abandonment of a merger. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-229.

§ 79-29-214. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-214. [Laws, 2000, ch. 469, § 49, eff from and after July 1, 2000.]

Editor's Note — Former § 79-29-214 was entitled: Appraisal rights. For present similar provisions, see § 79-29-231.

§ 79-29-215. Annual report for Secretary of State.

(1) Each domestic limited liability company and each foreign limited liability company authorized to transact business in this state shall deliver on such date as may be established by the Secretary of State, to the Secretary of State for filing an annual report that sets forth:

(a) The name of the limited liability company and the state or country or other foreign jurisdiction under whose law it is organized;

(b) The name and street or physical address of its registered agent in this state;

(c) The address of its principal office;

(d) The names and business addresses of the managers if manager-managed and the name and address of at least one (1) member if member-managed;

(e) The names, titles and business addresses of its principal officers, if any;

(f) A statement as to whether the limited liability company has a written operating agreement; and

(g) A brief description of the nature of its business.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) If an annual report does not contain the information required by this section, the Secretary of State shall notify promptly in writing the reporting limited liability company and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-217. Notice.

Certificates of formation and all other documents properly filed and of record with the Office of the Secretary of State constitute notice to the public of all information stated therein.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-219. Certificate of existence.

(1) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the Office of the Secretary of State show that the limited liability company has been formed under Section 79-29-201 and a certificate of dissolution or certificate of administrative dissolution pertaining to the limited liability company has not been filed that has become effective. A certificate of existence must state:

- (a) The name of the limited liability company;
- (b) That the limited liability company was duly formed under the laws of this state and the date of formation;
- (c) Whether all fees due under this chapter to the Secretary of State have been paid;
- (d) Whether the limited liability company's most recent annual report required by Section 79-29-215 has been filed with the Secretary of State;
- (e) Whether a certificate of administrative dissolution has been filed;
- (f) Whether a certificate of dissolution has been filed; and
- (g) Other facts of record in the Office of the Secretary of State which are specified by the person requesting the certificate.

(2) Subject to any qualification stated in the certificate, a certificate of existence issued by the Secretary of State is conclusive evidence that the limited liability company is in existence.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-221. Merger of limited liability company.

(1) One or more domestic limited liability companies may merge with a domestic or foreign entity pursuant to an agreement of merger.

(2) A domestic or foreign entity may be a party to the merger, or may be created by the terms of the agreement of merger, only if:

- (a) The merger is permitted by the laws under which the entity is organized or by which it is governed; and
- (b) In effecting the merger, the entity complies with such laws and with its organizational documents.

(3) The agreement of merger must include:

- (a) The name of each entity that will merge and the name of the entity that will be the survivor of the merger;
- (b) The terms and conditions of the merger;
- (c) The manner and basis of converting the interests of each merging entity into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(d) The organizational documents of any entity to be created by the merger, or if a new entity is not to be created by the merger, any amendments to the survivor's organizational documents; and

(e) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the organizational documents of any such party.

(4) The terms described in subsections (3)(b) and (3)(c) of this section may be made dependent on facts ascertainable outside the agreement of merger, provided that those facts are objectively ascertainable. The term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person, including the limited liability company.

(5) The agreement of merger may also include a provision that the agreement of merger may be amended prior to filing the certificate of merger with the Secretary of State, provided that if the members of a domestic limited liability company that is a party to the merger are required or permitted to vote on the agreement of merger, the agreement of merger must provide that subsequent to approval of the agreement of merger by such members the agreement of merger may not be amended to:

(a) Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be received by the owners of interests in any party to the merger upon conversion of their interests under the agreement of merger;

(b) Change the organizational documents of any other entity that will survive or be created as a result of the merger; or

(c) Change any of the other terms or conditions of the agreement of merger if the change would adversely affect such members in any material respect.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-223. Action on an agreement of merger.

In the case of a limited liability company that is a party to a merger:

(a) The agreement of merger must be adopted by the members in accordance with subsection (c) of this section.

(b) Unless the agreement of merger is not required to be approved by the members, the limited liability company must notify each member and each owner of a financial interest, whether or not entitled to vote, of the meeting of members at which the agreement of merger is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the agreement of merger and must contain or be accompanied by a copy or summary of the agreement of merger. If the limited liability company is to be merged into an existing entity, the notice shall also include or be accompanied by a copy or summary of the organizational documents of that entity. If the limited liability company is to be merged into an entity that is to be created pursuant to the merger, the notice shall

include or be accompanied by a copy or a summary of the organizational documents of the new entity.

(c) Approval of the agreement of merger requires the approval of at least a majority of the votes entitled to be cast on the agreement of merger, and, if any class or series of interests is entitled to vote as a separate group on the agreement of merger, the approval of at least a majority of the votes entitled to be cast on the merger by that voting group.

(d) Separate voting by voting groups is required:

(i) On an agreement of merger, by each class or series of interests that: 1. are to be converted, pursuant to the provisions of the agreement of merger, into shares or other securities, interests, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing; or 2. would have a right to vote as a separate group on a provision in the agreement of merger that, if contained in a proposed amendment to the certificate of formation or operating agreement, would require action by separate voting groups under the certificate of formation or operating agreement;

(ii) On an agreement of merger, if the voting group is entitled under the certificate of formation or operating agreement, to vote as a voting group to approve an agreement of merger.

(e) If as a result of a merger one or more members or owners of a financial interest of a domestic limited liability company would become subject to personal liability for the obligations or liabilities of any entity, approval of the agreement of merger shall require the execution, by each such member and owner of a financial interest, of a separate written consent to become subject to such personal liability.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in punctuation in (b) was corrected by substituting a period for the comma preceding "If the limited liability company."

§ 79-29-225. Certificate of merger.

After an agreement of merger has been adopted and approved as required by this chapter, a certificate of merger shall be executed on behalf of each party to the merger by an authorized person. The certificate shall set forth:

(a) The names and jurisdictions of formation or organization of the parties to the merger and the date on which the merger occurred or is to be effective;

(b) If the formation document of the survivor of a merger is amended, or if a new entity is created as a result of a merger, the amendments to the formation document of the survivor or the formation document of the new entity;

(c) A statement that the agreement of merger was duly approved by the members and, if voting by any separate voting group was required, by each

such separate voting group, in the manner required by this chapter and the certificate of formation and operating agreement;

(d) As to each entity that was a party to the merger, a statement that the agreement of merger and the performance of its terms were duly authorized by all action required by the laws under which the entity is organized, or by which it is governed, and by its organizational documents; and

(e) The future effective date of the merger, which shall be a date or time certain not later than the ninetieth day after the date it is filed, if it is not to be effective upon the filing of the certificate of merger.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-227. Effect of merger.

(1) When a merger becomes effective:

(a) The entity that is designated in the agreement of merger as the survivor continues or comes into existence, as the case may be;

(b) The separate existence of every entity that is merged into the survivor ceases;

(c) All property owned by, and every contract right possessed by, each entity that merges into the survivor is vested in the survivor without reversion or impairment;

(d) All liabilities of each entity that is merged into the survivor are vested in the survivor;

(e) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) The organizational documents of the survivor are amended to the extent provided in the agreement of merger;

(g) The organizational documents of a survivor that is created by the merger become effective; and

(h) The interests in an entity that is a party to a merger that are to be converted under the agreement of merger into shares interests, obligations, rights to acquire securities, other securities, cash, other property, or any combination of the foregoing, are converted, and the former holders of such interests are entitled only to the rights provided to them in the agreement of merger or to any rights they may have under Section 79-29-231.

(2) Any member or owner of a financial interest of a domestic limited liability company that is a party to a merger who, prior to the merger, was liable for the liabilities or obligations of such limited liability company shall not be released from such liabilities or obligations by reason of the merger.

(3) Upon a merger becoming effective, a foreign entity that is the survivor of the merger is deemed to:

(a) Appoint the Secretary of State as its agent for service of process in a proceeding to enforce the rights of the members and owners of a financial

interest of each domestic limited liability company that is a party to the merger who exercise appraisal rights; and

(b) Agree that it will promptly pay the amount, if any, to which such members and owners of a financial interest are entitled under Section 79-29-231.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-229. Abandonment of a merger.

(1) Unless otherwise provided in an agreement of merger or in the laws under which a domestic or foreign entity that is a party to a merger is organized or by which it is governed, after the agreement of merger has been adopted and approved as required by this chapter, and at any time before the merger has become effective, it may be abandoned by any party thereto without action by the party's owners of interests, in accordance with any procedures set forth in the agreement of merger or, if no such procedures are set forth in the agreement of merger, in the manner determined by the entity subject to any contractual rights of other parties to the merger.

(2) If a merger is abandoned under subsection (1) of this section after a certificate of merger has been filed with the Secretary of State but before the merger has become effective, a statement that the merger has been abandoned in accordance with this subsection, executed on behalf of a party to the merger by any authorized person shall be delivered to the Secretary of State for filing prior to the effective date of the merger. Upon filing, the statement shall take effect and the merger shall be deemed abandoned and shall not become effective.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-231. Appraisal rights.

[Effective until January 1, 2013, this section will read:]

(1) The certificate of formation or written operating agreement may eliminate, expand or restrict the appraisal rights granted in this section and may vary, modify, eliminate or expand any of the provisions of this section.

(2) **Definitions.** — In this section:

(a) "Entitled persons" means all owners of financial interests. Financial interests may be owned by members and may also be owned by persons who are not members of the limited liability company. Members of the limited liability company who have no financial interests in the limited liability company are not entitled to appraisal rights pursuant to this section.

(b) "Fair value" means the value of the financial interests of the limited liability company determined:

(i) Immediately before the effectuation of the action to which the entitled person objects;

(ii) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(iii) Without discounting for lack of marketability or minority status.

(3) Right to appraisal. —

(a) Unless otherwise provided in the certificate of formation or written operating agreement or other written agreement each entitled person is entitled to appraisal rights, and to obtain payment of the fair value of the entitled person's financial interest in the event of any of the following actions:

(i) Consummation of a merger to which the limited liability company is a party;

(ii) Consummation of a sale, lease, exchange, or other disposition of assets if the disposition would leave the limited liability company without a significant continuing business activity. If a limited liability company retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from continuing operations or revenues from continuing operations for that fiscal year, in each case of the limited liability company and its subsidiaries on a consolidated basis, the limited liability company will conclusively be deemed to have retained a significant continuing business activity;

(iii) Any other action to the extent provided by the certificate of formation or written operating agreement.

(b) An entitled person may not challenge a completed action for which appraisal rights are available unless such action:

(i) Was not effectuated in accordance with the applicable provisions of this chapter or the limited liability company's certificate of formation or operating agreement; or

(ii) Was procured as a result of fraud or material misrepresentation.

(4) Notice of appraisal rights. — If a proposed action described in subsection (3) of this section is to be submitted to a vote, the meeting notice must state that the limited liability company has concluded that entitled persons are entitled to assert appraisal rights under this section and a copy of this section or a copy of the appraisal rights and procedures as provided in the written operating agreement, as applicable, must accompany the meeting notice sent to the entitled persons.

(5) Notice of intent to demand payment. —

(a) If a proposed action requiring appraisal rights under subsection (3)(a) of this section is submitted to a vote, entitled persons who wish to assert appraisal rights with respect to any class or series of financial interests:

(i) Must deliver to the limited liability company before the vote is taken written notice of the person's intent to demand payment if the proposed action is effectuated; and

(ii) Must not vote, or cause or permit to be voted, any of the person's financial interests in favor of the proposed action.

(b) An entitled person who does not satisfy the requirements of subsection (5)(a) of this section is not entitled to payment under this section.

(6) Appraisal notice and form. —

(a) If a proposed action requiring appraisal rights under subsection (3) of this section becomes effective, the limited liability company must deliver a written appraisal notice and form required by this subsection (6) to all entitled persons who satisfied the requirements of subsection (5) of this section.

(b) The appraisal notice must be sent no earlier than the date the action became effective and no later than ten (10) days after such date and must:

(i) Supply a form that specifies the date of the first announcement to entitled persons of the principal terms of the proposed action and requires the person asserting appraisal rights to certify: 1. whether the entitled person acquired ownership of the interests for which appraisal rights are asserted before that date; and 2. that the person did not vote for the transaction;

(ii) State:

1. Where the form must be sent and where certificates for certificated interests must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (6)(b)(ii)2 of this section;

2. A date by which the limited liability company must receive the form which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (6)(a) appraisal notice and form are sent, and state that the person shall have waived the right to demand appraisal with respect to the interests unless the form is received by the limited liability company by such specified date;

3. The limited liability company's estimate of the fair value of the financial interests;

4. That, if requested in writing, the limited liability company will provide to the person so requesting, within ten (10) days after the date specified in subsection (6)(b)(ii)2 of this section, the number of persons who return the forms by the specified date and the aggregate interests owned by them; and

5. The date by which the notice to withdraw under subsection (7) must be received, which date must be within twenty (20) days after the date specified in subsection (6)(b)(ii)2 of this section; and

(c) Be accompanied by a copy of this section or by a copy of the appraisal rights and procedures as provided in the written operating agreement, as applicable.

(7) Perfection of rights; right to withdraw. —

(a) An entitled person who receives notice pursuant to subsection (6) of this section and who wishes to exercise appraisal rights must certify on the form sent by the limited liability company whether the entitled person acquired ownership of the person's financial interests before the date required to be set forth in the notice pursuant to subsection (6)(b) of this

section. If an entitled person fails to make this certification, the limited liability company may elect to treat the entitled person's financial interests as after-acquired interests under subsection (9) of this section. In addition, an entitled person who wishes to exercise appraisal rights must execute and return the form and, in the case of certificated interests, deposit the entitled person's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subsection (6)(b)(ii)2 of this section. Once an entitled person deposits that person's certificates or, in the case of uncertificated interests, returns the executed forms, that entitled person loses all rights as a member or owner of a financial interest, unless the entitled person withdraws pursuant to subsection (7)(b) of this section.

(b) An entitled person who has complied with subsection (7)(a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the limited liability company in writing by the date set forth in the appraisal notice pursuant to subsection (6)(b)(ii)5 of this section. An entitled person who fails to so withdraw from the appraisal process may not thereafter withdraw from the appraisal process without the limited liability company's written consent.

(c) An entitled person who does not execute and return the form and, in the case of certificated interests, deposit that person's certificates where required, each by the date set forth in the notice described in subsection (6)(b)(ii)2 of this section, shall not be entitled to payment under this subsection.

(8) Payment. —

(a) Except as provided in subsection (7) of this section, within thirty (30) days after the form required by subsection (6)(b)(ii)2 of this section is due, the limited liability company shall pay in cash to those entitled persons who complied with subsection (7)(a) of this section the amount the limited liability company estimates to be the fair value of their financial interests, plus interest at the legal rate.

(b) The payment to each person pursuant to subsection (8)(a) of this section must be accompanied by:

(i) Financial statements of the limited liability company that issued the financial interests to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in equity for that year, and the latest available interim financial statements, if any;

(ii) A statement of the limited liability company's estimate of the fair value of the financial interests, which estimate must equal or exceed the limited liability company's estimate given pursuant to subsection (6)(b)(ii)3 of this section;

(iii) A statement that persons described in this subsection (8) have the right to demand further payment under subsection (10) of this section and that if any such person does not do so within the time period specified therein, the person shall be deemed to have accepted the payment in full

satisfaction of the limited liability company's obligations under this section.

(9) After-acquired interests. —

(a) A limited liability company may elect to withhold payment required by subsection (8) of this section from any entitled person who did not certify that ownership of all of the entitled person's financial interests for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subsection (6)(b)(i) of this section.

(b) If the limited liability company elected to withhold payment under subsection (9)(a) of this section, it must, within thirty (30) days after the form required by subsection (6)(b)(ii)2 of this section is due, notify all entitled persons who are described in subsection (9)(a) of this section:

(i) Of the information required by subsection (8)(b)(i) of this section;

(ii) Of the limited liability company's estimate of fair value pursuant to subsection (8)(b)(ii) of this section;

(iii) That they may accept the limited liability company's estimate of fair value, plus interest at the legal rate, in full satisfaction of their demands, or demand appraisal under subsection (10) of this section;

(iv) That those entitled persons who wish to accept the offer must so notify the limited liability company of the person's acceptance of the limited liability company's offer within thirty (30) days after receiving the offer; and

(v) That those entitled persons who do not satisfy the requirements for demanding appraisal under subsection (10) of this section shall be deemed to have accepted the limited liability company's offer.

(c) Within ten (10) days after receiving the entitled person's acceptance pursuant to subsection (9)(b) of this section, the limited liability company must pay in cash the amount it offered under subsection (9)(b)(ii) of this section to each person who agreed to accept the limited liability company's offer in full satisfaction of the person's demand.

(d) Within forty (40) days after sending the notice described in subsection (9)(b) of this section, the limited liability company must pay in cash the amount it offered to pay under subsection (8)(b) of this section to each entitled person described in subsection (9)(b)(ii) of this section.

(10) Procedure if entitled person dissatisfied with payment or offer. —

(a) An entitled person paid pursuant to subsection (8) of this section who is dissatisfied with the amount of the payment must notify the limited liability company in writing of that person's estimate of the fair value of the financial interests and demand payment of that estimate plus interest at the legal rate less any payment under subsection (8) of this section. An entitled person offered payment under subsection (9) of this section who is dissatisfied with that offer must reject the offer and demand payment of the person's stated estimate of the fair value of the financial interests plus interest at the legal rate.

(b) An entitled person who fails to notify the limited liability company in writing of that entitled person's demand to be paid the entitled person's

stated estimate of the fair value plus interest at the legal rate under subsection (10)(a) of this section within thirty (30) days after receiving the limited liability company's payment or offer of payment under subsection (8) or (9) of this section, respectively, waives the right to demand payment under this subsection (10) and shall be entitled only to the payment made or offered pursuant to those respective subsections.

(11) Court action. —

(a) If an entitled person makes demand for payment under subsection (10) of this section which remains unsettled, the limited liability company shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the financial interests and accrued interest at the legal rate. If the limited liability company does not commence the proceeding within the sixty-day period, it shall pay in cash to each the entitled person the amount the entitled person demanded pursuant to subsection (10)(a) of this section plus interest at the legal rate.

(b) The limited liability company shall commence the proceeding in the chancery court of the county where the limited liability company's registered office is located. If the limited liability company is a foreign limited liability company without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic limited liability company merged with the foreign limited liability company was located at the time of the transaction.

(c) The limited liability company shall make all entitled persons whose demands remain unsettled, whether or not residents of this state, parties to the proceeding as in an action against their interests, and all parties must be served with a copy of the complaint. Nonresidents may be served as otherwise provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (11)(b) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The entitled persons demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each entitled person made a party to the proceeding is entitled to judgment: (i) for the amount, if any, by which the court finds the fair value of the entitled person's financial interests, plus interest at the legal rate, exceeds the amount paid by the limited liability company to the entitled person for such financial interests; or (ii) for the fair value, plus interest at the legal rate, of the entitled person's financial interests for which the limited liability company elected to withhold payment under subsection (9) of this section.

(12) Court costs and counsel fees. —

(a) The court in an appraisal proceeding commenced under subsection (11) of this section shall determine all costs of the proceeding including the

reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the entitled persons demanding appraisal, in amounts the court finds equitable, to the extent the court finds such persons acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subsection.

(b) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(i) Against the limited liability company and in favor of any or all entitled persons demanding appraisal if the court finds the limited liability company did not substantially comply with the requirements of subsection (4), (6), (8) or (9) of this section; or

(ii) Against either the limited liability company or an entitled person demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subsection.

(c) If the court in an appraisal proceeding finds that the services of counsel for any entitled person were of substantial benefit to other persons similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the entitled persons who were benefited.

(d) To the extent the limited liability company fails to make a required payment pursuant to subsection (8), (9) or (10) of this section, the entitled person may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the limited liability company all costs and expenses of the suit, including counsel fees.

[Effective from and after January 1, 2013, this section will read:]

(1) The certificate of formation or written operating agreement may eliminate, expand or restrict the appraisal rights granted in this section and may vary, modify, eliminate or expand any of the provisions of this section.

(2) **Definitions.** — In this section:

(a) “Entitled persons” means all owners of financial interests. Financial interests may be owned by members and may also be owned by persons who are not members of the limited liability company. Members of the limited liability company who have no financial interests in the limited liability company are not entitled to appraisal rights pursuant to this section.

(b) “Fair value” means the value of the financial interests of the limited liability company determined:

(i) Immediately before the effectuation of the action to which the entitled person objects;

(ii) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(iii) Without discounting for lack of marketability or minority status.

(3) **Right to appraisal.** — (a) Unless otherwise provided in the certificate of formation or written operating agreement or other written agreement each entitled person is entitled to appraisal rights, and to obtain payment of the fair value of the entitled person's financial interest in the event of any of the following actions:

(i) Consummation of a merger to which the limited liability company is a party;

(ii) Consummation of a sale, lease, exchange, or other disposition of assets if the disposition would leave the limited liability company without a significant continuing business activity. If a limited liability company retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from continuing operations or revenues from continuing operations for that fiscal year, in each case of the limited liability company and its subsidiaries on a consolidated basis, the limited liability company will conclusively be deemed to have retained a significant continuing business activity;

(iii) Any other action to the extent provided by the certificate of formation or written operating agreement.

(b) An entitled person may not challenge a completed action for which appraisal rights are available unless such action:

(i) Was not effectuated in accordance with the applicable provisions of this chapter or the limited liability company's certificate of formation or operating agreement; or

(ii) Was procured as a result of fraud or material misrepresentation.

(4) **Notice of appraisal rights.** — If a proposed action described in subsection (3) of this section is to be submitted to a vote, the meeting notice must state that the limited liability company has concluded that entitled persons are entitled to assert appraisal rights under this section and a copy of this section or a copy of the appraisal rights and procedures as provided in the written operating agreement, as applicable, must accompany the meeting notice sent to the entitled persons.

(5) **Notice of intent to demand payment.** — (a) If a proposed action requiring appraisal rights under subsection (3)(a) of this section is submitted to a vote, entitled persons who wish to assert appraisal rights with respect to any class or series of financial interests:

(i) Must deliver to the limited liability company before the vote is taken written notice of the person's intent to demand payment if the proposed action is effectuated; and

(ii) Must not vote, or cause or permit to be voted, any of the person's financial interests in favor of the proposed action.

(b) An entitled person who does not satisfy the requirements of subsection (5) (a) of this section is not entitled to payment under this section.

(6) **Appraisal notice and form.** — (a) If a proposed action requiring appraisal rights under subsection (3) of this section becomes effective, the

limited liability company must deliver a written appraisal notice and form required by this subsection (6) to all entitled persons who satisfied the requirements of subsection (5) of this section.

(b) The appraisal notice must be sent no earlier than the date the action became effective and no later than ten (10) days after such date and must:

(i) Supply a form that specifies the date of the first announcement to entitled persons of the principal terms of the proposed action and requires the person asserting appraisal rights to certify: 1. whether the entitled person acquired ownership of the interests for which appraisal rights are asserted before that date; and 2. that the person did not vote for the transaction;

(ii) State:

1. Where the form must be sent and where certificates for certificated interests must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (6)(b)(ii)2 of this section;

2. A date by which the limited liability company must receive the form which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (6)(a) appraisal notice and form are sent, and state that the person shall have waived the right to demand appraisal with respect to the interests unless the form is received by the limited liability company by such specified date;

3. The limited liability company's estimate of the fair value of the financial interests;

4. That, if requested in writing, the limited liability company will provide to the person so requesting, within ten (10) days after the date specified in subsection (6)(b)(ii)2 of this section, the number of persons who return the forms by the specified date and the aggregate interests owned by them; and

5. The date by which the notice to withdraw under subsection (7) must be received, which date must be within twenty (20) days after the date specified in subsection (6)(b)(ii)2 of this section; and

(c) Be accompanied by a copy of this section or by a copy of the appraisal rights and procedures as provided in the written operating agreement, as applicable.

(7) Perfection of rights; right to withdraw. — (a) An entitled person who receives notice pursuant to subsection (6) of this section and who wishes to exercise appraisal rights must certify on the form sent by the limited liability company whether the entitled person acquired ownership of the person's financial interests before the date required to be set forth in the notice pursuant to subsection (6)(b) of this section. If an entitled person fails to make this certification, the limited liability company may elect to treat the entitled person's financial interests as after-acquired interests under subsection (9) of this section. In addition, an entitled person who wishes to exercise appraisal rights must execute and return the form and, in the case of certificated interests, deposit the entitled person's certificates in accordance with the

terms of the notice by the date referred to in the notice pursuant to subsection (6)(b)(ii)2 of this section. Once an entitled person deposits that person's certificates or, in the case of uncertificated interests, returns the executed forms, that entitled person loses all rights as a member or owner of a financial interest, unless the entitled person withdraws pursuant to subsection (7)(b) of this section.

(b) An entitled person who has complied with subsection (7)(a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the limited liability company in writing by the date set forth in the appraisal notice pursuant to subsection (6)(b)(ii)5 of this section. An entitled person who fails to so withdraw from the appraisal process may not thereafter withdraw from the appraisal process without the limited liability company's written consent.

(c) An entitled person who does not execute and return the form and, in the case of certificated interests, deposit that person's certificates where required, each by the date set forth in the notice described in subsection (6)(b)(ii)2 of this section, shall not be entitled to payment under this subsection.

(8) **Payment.** — (a) Except as provided in subsection (7) of this section, within thirty (30) days after the form required by subsection (6)(b)(ii)2 of this section is due, the limited liability company shall pay in cash to those entitled persons who complied with subsection (7)(a) of this section the amount the limited liability company estimates to be the fair value of their financial interests, plus interest at the legal rate.

(b) The payment to each person pursuant to subsection (8)(a) of this section must be accompanied by:

(i) Financial statements of the limited liability company that issued the financial interests to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in equity for that year, and the latest available interim financial statements, if any;

(ii) A statement of the limited liability company's estimate of the fair value of the financial interests, which estimate must equal or exceed the limited liability company's estimate given pursuant to subsection (6)(b)(ii)3 of this section;

(iii) A statement that persons described in this subsection (8) have the right to demand further payment under subsection (10) of this section and that if any such person does not do so within the time period specified therein, the person shall be deemed to have accepted the payment in full satisfaction of the limited liability company's obligations under this section.

(9) **After-acquired interests.** — (a) A limited liability company may elect to withhold payment required by subsection (8) of this section from any entitled person who did not certify that ownership of all of the entitled person's financial interests for which appraisal rights are asserted was acquired before

the date set forth in the appraisal notice sent pursuant to subsection (6)(b)(i) of this section.

(b) If the limited liability company elected to withhold payment under subsection (9)(a) of this section, it must, within thirty (30) days after the form required by subsection (6)(b)(ii)2 of this section is due, notify all entitled persons who are described in subsection (9)(a) of this section:

(i) Of the information required by subsection (8)(b)(i) of this section;

(ii) Of the limited liability company's estimate of fair value pursuant to subsection (8)(b)(ii) of this section;

(iii) That they may accept the limited liability company's estimate of fair value, plus interest at the legal rate, in full satisfaction of their demands, or demand appraisal under subsection (10) of this section;

(iv) That those entitled persons who wish to accept the offer must so notify the limited liability company of the person's acceptance of the limited liability company's offer within thirty (30) days after receiving the offer; and

(v) That those entitled persons who do not satisfy the requirements for demanding appraisal under subsection (10) of this section shall be deemed to have accepted the limited liability company's offer.

(c) Within ten (10) days after receiving the entitled person's acceptance pursuant to subsection (9)(b) of this section, the limited liability company must pay in cash the amount it offered under subsection (9)(b)(ii) of this section to each person who agreed to accept the limited liability company's offer in full satisfaction of the person's demand.

(d) Within forty (40) days after sending the notice described in subsection (9)(b) of this section, the limited liability company must pay in cash the amount it offered to pay under subsection (8)(b) of this section to each entitled person described in subsection (9)(b)(ii) of this section.

(10) Procedure if entitled person dissatisfied with payment or offer. — (a) An entitled person paid pursuant to subsection (8) of this section who is dissatisfied with the amount of the payment must notify the limited liability company in writing of that person's estimate of the fair value of the financial interests and demand payment of that estimate plus interest at the legal rate less any payment under subsection (8) of this section. An entitled person offered payment under subsection (9) of this section who is dissatisfied with that offer must reject the offer and demand payment of the person's stated estimate of the fair value of the financial interests plus interest at the legal rate.

(b) An entitled person who fails to notify the limited liability company in writing of that entitled person's demand to be paid the entitled person's stated estimate of the fair value plus interest at the legal rate under subsection (10) (a) of this section within thirty (30) days after receiving the limited liability company's payment or offer of payment under subsection (8) or (9) of this section, respectively, waives the right to demand payment under this subsection (10) and shall be entitled only to the payment made or offered pursuant to those respective subsections.

(11) **Court action.** — (a) If an entitled person makes demand for payment under subsection (10) of this section which remains unsettled, the limited liability company shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the financial interests and accrued interest at the legal rate. If the limited liability company does not commence the proceeding within the sixty-day period, it shall pay in cash to each the entitled person the amount the entitled person demanded pursuant to subsection (10)(a) of this section plus interest at the legal rate.

(b) The limited liability company shall commence the proceeding in the chancery court of the county where the limited liability company's principal office is located. If the limited liability company is a foreign limited liability company, it shall commence the proceeding in the county in this state where the principal office of the domestic limited liability company merged with the foreign limited liability company was located at the time of the transaction.

(c) The limited liability company shall make all entitled persons whose demands remain unsettled, whether or not residents of this state, parties to the proceeding as in an action against their interests, and all parties must be served with a copy of the complaint. Nonresidents may be served as otherwise provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (11)(b) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The entitled persons demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each entitled person made a party to the proceeding is entitled to judgment: (i) for the amount, if any, by which the court finds the fair value of the entitled person's financial interests, plus interest at the legal rate, exceeds the amount paid by the limited liability company to the entitled person for such financial interests; or (ii) for the fair value, plus interest at the legal rate, of the entitled person's financial interests for which the limited liability company elected to withhold payment under subsection (9) of this section.

(12) **Court costs and counsel fees.** — (a) The court in an appraisal proceeding commenced under subsection (11) of this section shall determine all costs of the proceeding including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the entitled persons demanding appraisal, in amounts the court finds equitable, to the extent the court finds such persons acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subsection.

(b) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(i) Against the limited liability company and in favor of any or all entitled persons demanding appraisal if the court finds the limited liability company did not substantially comply with the requirements of subsection (4), (6), (8) or (9) of this section; or

(ii) Against either the limited liability company or an entitled person demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subsection.

(c) If the court in an appraisal proceeding finds that the services of counsel for any entitled person were of substantial benefit to other persons similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the entitled persons who were benefited.

(d) To the extent the limited liability company fails to make a required payment pursuant to subsection (8), (9) or (10) of this section, the entitled person may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the limited liability company all costs and expenses of the suit, including counsel fees.

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 111, eff from and after Jan. 1, 2013.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, several typographical errors in this section were corrected as follows: in (10)(b), substituted "subsection (8) or (9)" for "subsections (8) or (9)"; in (12)(b)(i), substituted "subsection (4), (6), (8) or (9)" for "subsections (4), (6), (8) or (9)"; and in (12)(d), substituted "subsection (8), (9) or (10)" for "subsections (8), (9) or (10)."

Amendment Notes — The 2012 amendment substituted "principal office" for "registered office" two times and deleted "without a registered office in this state" preceding "it shall commence" in (11)(b).

§ 79-29-233. Action on an agreement to sell, lease, exchange or otherwise dispose of assets.

In the case of a limited liability company that is a party to an agreement outside the ordinary course of the limited liability company's activities to sell, lease, exchange, or otherwise dispose of assets if the disposition would leave the limited liability company without a significant continuing business activity, as such term is defined in Section 79-29-231(3)(a)(ii):

(a) The agreement, referred to herein as the "asset sale agreement," must be approved by the members in accordance with subsection (c) of this section.

(b) Unless the asset sale agreement is not required to be approved by the members, the limited liability company must notify each member and each owner of a financial interest, whether or not entitled to vote, of the meeting of members at which the asset sale agreement is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the asset sale agreement and must contain or be accompanied by a copy or summary of the asset sale agreement.

(c) Approval of the asset sale agreement requires the approval of at least a majority of the votes entitled to be cast on the asset sale agreement, and, if any class or series of interests is entitled to vote as a separate group on the asset sale agreement, the approval of at least a majority of the votes entitled to be cast on the asset sale agreement by that voting group.

(d) Separate voting by voting groups is required:

(i) On an asset sale agreement, by each class or series of interests that would have a right to vote as a separate group on a provision in the asset sale agreement that, if contained in a proposed amendment to the certificate of formation or operating agreement, would require action by separate voting groups under the certificate of formation or operating agreement;

(ii) On an asset sale agreement, if the voting group is entitled under the certificate of formation or operating agreement, to vote as a voting group to approve an asset sale agreement.

(e) If as a result of the asset disposition one or more members or owners of a financial interest would become subject to personal liability for the obligations or liabilities of any entity, approval of the asset sale agreement shall require the execution, by each such member and owner of a financial interest, of a separate written consent to become subject to personal liability.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

ARTICLE 3.

MEMBERS.

SEC.

| | |
|------------|--|
| 79-29-301. | Admission of members. |
| 79-29-302. | Repealed. |
| 79-29-303. | Withdrawal of member and expulsion of member. |
| 79-29-304. | Repealed. |
| 79-29-305. | Management of limited liability company. |
| 79-29-306. | Repealed. |
| 79-29-307. | Agency power of members, managers and officers. |
| 79-29-308. | Repealed. |
| 79-29-309. | Voting, classes and meetings. |
| 79-29-311. | Liability to third parties. |
| 79-29-313. | Events of bankruptcy. |
| 79-29-315. | Access to and confidentiality of information; records. |

§ 79-29-301. Admission of members.

(1) A person becomes a member on the later of:

(a) The formation of the limited liability company; or

(b) The date stated in the records of the limited liability company as the date that person becomes a member.

(2) After the formation of the limited liability company, a person is admitted as a member of the limited liability company:

(a) In the case of a person who is not an assignee of a financial interest, including a person acquiring an interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring a financial interest in the limited liability company at the time provided in and upon the compliance with the certificate of formation or the operating agreement or, if the certificate of formation or the operating agreement does not so provide, upon the written consent of all members. If the parties do not specify an agreed admission date in writing, the admission shall be deemed to have occurred upon the date of the compliance with the conditions set forth in this subsection; and

(b) In the case of an assignee of a financial interest, upon compliance with subsection (1) of Section 79-29-707. If the parties do not specify an agreed admission date in writing the admission shall be deemed to have occurred upon the date of the compliance with the conditions set forth in subsection (1) of Section 79-29-707.

(c) In the case of a person being admitted as a member of a surviving limited liability company pursuant to a merger approved in accordance with Section 79-29-223 of this chapter, as provided in the operating agreement of the surviving limited liability company or in the agreement of merger, and in the event of any inconsistency, the terms of the agreement of merger shall control; and in the case of a person being admitted as a member of a limited liability company pursuant to a merger in which such limited liability company is not the surviving limited liability company in the merger, as provided in the operating agreement of such limited liability company.

(d) In the case of a person who inherits an interest in a limited liability company from a deceased member, upon the distribution of the interest from the estate of the deceased member to the person.

(e) In the case of a person who is the successor of a member that is an entity which has merged, upon the merger of the member.

(3) A person may be admitted to a limited liability company as a member of the limited liability company and may receive an interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company.

(4) A person may be admitted to a limited liability company as a member of the limited liability company without acquiring an interest in the limited liability company.

(5) A person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contri-

bution to the limited liability company or without acquiring an interest in the limited liability company.

(6) A certificate of formation or written operating agreement may provide that a member or members shall have preemptive rights to subscribe to any additional issue of interests in a limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-301 [Laws, 1994, ch. 402, § 22; Laws, 1997, ch. 418, § 37, eff from and after July 1, 1997; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to admission of a member. See Editor's Note under Chapter 29 heading.

§ 79-29-302. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-302. [Laws, 1994, ch. 402, § 23, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-302 was entitled: Management of limited liability company. For present similar provisions, see § 79-29-305.

§ 79-29-303. Withdrawal of member and expulsion of member.

A member may withdraw from a limited liability company only at the time or upon the happening of events specified in a written operating agreement and in accordance with the written operating agreement or upon the written consent of all the members. Notwithstanding anything to the contrary under applicable law, unless the certificate of formation or a written operating agreement provides otherwise, a member may not withdraw from a limited liability company prior to the dissolution and winding-up of the limited liability company without the written consent of all of the members of the limited liability company. Unless otherwise provided by the certificate of formation or written operating agreement, a limited liability company has no power to expel a member. Except as otherwise provided by the certificate of formation or written operating agreement, a member who has withdrawn from or been expelled from a limited liability company ceases to be a member of the limited liability company and ceases to have any governance rights.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-303 [Laws, 1994, ch. 402, § 24, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to agency power of members and managers. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-307.

§ 79-29-304. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-304. [Laws, 1994, ch. 402, § 25, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-304 was entitled: Classes and voting. For present similar provisions, see § 79-29-309.

§ 79-29-305. Management of limited liability company.

The management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than fifty percent (50%) of the said percentage or other interest in the profits controlling; provided however, that if an operating agreement provides for the management, in whole or in part, of a limited liability company by a manager or managers, the management of the limited liability company, to the extent so provided, shall be vested in the manager or managers who shall be chosen in the manner provided in the operating agreement.

A member of a member-managed limited liability company has the power and authority to delegate to one or more other persons the member's rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or the limited liability company and to delegate by agreement to other persons. The delegation shall not cause the member to cease to be a member of the limited liability company or cause the person to whom any such rights and powers have been delegated to be a member or manager, as the case may be, of the limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-305 [Laws, 1994, ch. 402, § 26, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to liability of third parties. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-311.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
- 2.-5. [Reserved for future use.]

II. Under Prior Law.

6. Under former § 79-29-302.

I. Under Current Law.

1. In general.

Absent a written agreement to the contrary, one member of a limited liability company (LLC) was not liable to other members for the loss of their investment under Miss. Code Ann. § 79-29-305(1). Likewise, neither party in the case had any enforceable obligation to contribute

any money or property to the limited liability company under Miss. Code Ann. § 79-29-502 (1) since the investor admitted that there was no written operating agreement for either LLC, nor was there any other written agreement that was signed by the investor and the restaurateur obligating them to contribute money or property to the LLCs. *Harrell v. St. John*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 58058 (S.D. Miss. May 31, 2011).

Improperly ousted member of two limited liability companies (LLCs) was entitled pursuant to Miss. Code Ann. § 79-29-306 (Rev. 2009) to collect the fair-market value of the member's interest in the LLCs from the companies and three indi-

vidual members where the three individual members acted in a willful and grossly negligent manner by improperly squeezing the ousted member out of the companies. *Bluewater Logistics, LLC v. Williford*, 55 So. 3d 148 (Miss. 2011).

2.-5. [Reserved for future use.]

II. Under Prior Law.

6. Under former § 79-29-302.

Where one member of a Mississippi professional limited liability company

(PLLC) filed a voluntary Chapter 7 case for the PLLC under 11 U.S.C.S. § 301, but the other member did not consent under Miss. Code Ann. § 79-29-304(2) (2009), and the PLLC documents did not authorize on member to file under Miss. Code Ann. § 79-29-302 (2009), the case was dismissed. In *re Wyatt & McAlister, PLLC*, — Bankr. —, 2010 Bankr. LEXIS 1413 (Bankr. S.D. Miss. Apr. 23, 2010).

RESEARCH REFERENCES

ALR. Construction and Application of Limited Liability Company Acts — Issues Relating to Liability of Limited Liability Company for Acts of Its Members, Managers, Officers, and Agents. 47 A.L.R.6th 1.

Construction and Application of Limited Liability Company Acts — Issues Re-

lating to Personal Liability of Individual Members and Managers of Limited Liability Company as to Third Parties. 46 A.L.R.6th 1.

§ 79-29-306. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.
§ 79-29-306. [Laws, 1994, ch. 402, § 27, eff from and after July 1, 1994.]

§ 79-29-307. Agency power of members, managers and officers.

(1) Except as provided in subsection (2) of this section, every member is an agent of the limited liability company for the purpose of conducting its business and affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument for apparently carrying on in the ordinary course the business or affairs of the limited liability company of which the person is a member, binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(2) If the certificate of formation or operating agreement provides that management of the limited liability company is vested in a manager or managers then except as otherwise provided in the certificate of formation or the operating agreement:

(a) No member, acting solely in the capacity as a member, is an agent of the limited liability company; and

(b) Every manager is an agent of the limited liability company for the purpose of its business and affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company

of any instrument for apparently carrying on in the ordinary course the business or affairs of the limited liability company of which the person is the manager, binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(3) Every officer is an agent of the limited liability company for the purpose of its business and affairs to the extent the agency authority has been delegated to the officer as provided by the operating agreement, and the act of any officer, including, but not limited to, the execution in the name of the limited liability company of any instrument for apparently carrying on in the ordinary course the business or affairs of the limited liability company of which the person is an officer, binds the limited liability company, unless the officer so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the officer is dealing has knowledge of the fact that the officer has no such authority.

(4) No act of a manager, member or officer in contravention of a restriction on authority shall bind the limited liability company to persons having knowledge of the restriction.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-307 [Laws, 1994, ch. 402, § 28, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to events of dissociation of members. See Editor's Note under Chapter 29 heading.

§ 79-29-308. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-308. [Laws, 1994, ch. 402, § 29, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-308 was entitled: Limited liability company agreement. For present similar provisions, see § 79-29-315.

§ 79-29-309. Voting, classes and meetings.

(1) With respect to any matter to be voted on, consented to or approved by the members, or any action required or permitted to be taken by the members the vote of each member shall be based on the then current percentage held by such member in the profits of the limited liability company owned by all the members.

(2) Unless a greater percentage is expressly required by another section of this chapter, with respect to any matter to be voted on, consented to or approved by the members or any action required or permitted to be taken by the members, the decision of members of a limited liability company owning more than fifty percent (50%) of the said percentage in the profits as described in subsection (1) of this section is controlling.

(3) A certificate of formation or operating agreement may provide for classes or groups of members having such relative rights, powers and duties as may be provided therein, and may make provision for the future creation in the manner provided therein of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. A certificate of formation or written operating agreement may provide that any member or class or group of members shall have no voting rights.

(4) The certificate of formation or operating agreement may grant to all or certain identified members or a specified class or group of the members the right to vote (on any basis) separately or with all or any class or group of the members, on any matter.

(5) A certificate of formation or operating agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(6)(a) Meetings of members may be held by means of telephone or other communications equipment by means of which all persons participating in the meeting can speak to and hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting;

(b) On any matter that is to be voted on, consented to or approved by members, or any action required or permitted to be taken by the members the members may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the members owning at least the percent of the interests which would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. If any action of the members is proposed to be taken pursuant to this subsection without the written consent of all of the members, the members who did not sign the written consent shall be provided with notice of the executed consent within twenty (20) days of the execution of the written consent. The execution of a written consent by any member shall constitute a waiver by such member of notice thereof.

(c) On any matter that is to be voted on by members, the members may vote in person or by proxy, and the proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law.

(d) If a meeting of members has not been held during the immediately preceding fifteen (15) months, a member or members owning twenty percent (20%) or more of the voting power of all members entitled to vote may call a regular meeting of members by giving thirty (30) days' written notice to the members, all at the expense of the limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Prior Law.

6. Under former § 79-29-304.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Prior Law.

6. Under former § 79-29-304.

Where one member of a Mississippi professional limited liability company

(PLLC) filed a voluntary Chapter 7 case for the PLLC under 11 U.S.C.S. § 301, but the other member did not consent under Miss. Code Ann. § 79-29-304(2) (2009), and the PLLC documents did not authorize on member to file under Miss. Code Ann. § 79-29-302 (2009), the case was dismissed. In re Wyatt & McAlister, PLLC, — Bankr. —, 2010 Bankr. LEXIS 1413 (Bankr. S.D. Miss. Apr. 23, 2010).

§ 79-29-311. Liability to third parties.

(1) Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member, manager or officer of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member, acting as a manager or acting as an officer of the limited liability company.

(2) A member, manager or officer of a limited liability company is not a proper party to a proceeding by or against a limited liability company, by reason of being a member, manager or officer, as applicable, of the limited liability company, except:

(a) Where the object of the proceeding is to enforce a member's, manager's or officer's right against or liability to the limited liability company; or

(b) In a derivative action brought pursuant to Article 11 of this chapter.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, under an operating agreement or under another agreement, a member, manager or officer may agree to be obligated personally for any or all of the debts, obligations and liabilities of the limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-313. Events of bankruptcy.

(1) The certificate of formation or the written operating agreement may provide for events the occurrence of which result in a member either (a) ceasing to have some or all governance rights; (b) ceasing to have some or all financial rights; or (c) ceasing to be a member.

(2) A person who has ceased to be a member shall continue to have any financial rights that the person had at the time of the event but shall cease to have any governance rights or any other rights.

(3) Unless otherwise provided in the certificate of formation or written operating agreement or with the written consent of all members, a member ceases to be a member upon the happening of the following events:

(a) A member: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for the person any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of the nature described in this subsection (3)(a); or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties; or

(b) If one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without the member's consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed or within ninety (90) days after the expiration of any stay, the appointment is not vacated.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-315. Access to and confidentiality of information; records.

(1) Each member of a limited liability company has the right, subject to such reasonable standards, including standards governing what information and documents are to be furnished at what time and location and at whose expense, as may be set forth in an operating agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any good faith purpose reasonably related to the member's interest as a member of the limited liability company:

(a) True, full and current information regarding the status of the business and financial condition of the limited liability company;

(b) Promptly after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year;

(c) A current list of the name and last known business, residence or mailing address of each member and manager;

(d) A copy of any written operating agreement and certificate of formation and all amendments thereto, together with executed copies of any

written powers of attorney pursuant to which the operating agreement and any certificate and all amendments thereto have been executed;

(e) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(f) Other information regarding the affairs of the limited liability company as is just and reasonable.

(2) Each manager shall have the right to examine all of the information described in subsection (1) of this section for a good faith purpose reasonably related to the position of manager.

(3) The manager or members of a limited liability company, referred to herein as the “authority,” shall have the right to keep confidential from the members and managers, for a period of time as the authority deems reasonable, any information which the authority reasonably believes to be in the nature of trade secrets or other information the disclosure of which the authority in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

(4) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(5) Any demand under this section shall be in writing and shall state the purpose of such demand with reasonable detail.

(6) Any action to enforce any right arising under this section shall be brought in the chancery court of the county where the limited liability company’s principal office is located. If the limited liability company refuses to permit a member to obtain or a manager to examine the information described in subsection (1) of this section or does not reply to the demand that has been made within five (5) business days after the demand has been made, the demanding member or manager may apply to the chancery court for an order to compel the disclosure. The chancery court is hereby vested with exclusive jurisdiction to determine whether the person seeking the information is entitled to the information sought. The court may summarily order the limited liability company to permit the demanding member to obtain or manager to examine the information described in subsection (1) of this section and to make copies or abstracts therefrom, or the court may summarily order the limited liability company to furnish to the demanding member or manager the information described in subsection (1) of this section on the condition that the demanding member or manager first pay to the limited liability company the reasonable cost of obtaining and furnishing the information and on such other conditions as the court of chancery deems appropriate. When a demanding member seeks to obtain or a manager seeks to examine the information described in subsection (1) of this section, the demanding member or manager shall first establish (a) that the demanding member or manager has complied

with the provisions of this section respecting the form and manner of making demand for obtaining or examining of the information, and (b) that the information the demanding member or manager seeks is reasonably related to the member's interest as a member or the manager's position as a manager, as the case may be. The court may, in its discretion, prescribe any limitations or conditions with reference to the obtaining or examining of information, or award such other or further relief as the chancery court may deem just and proper. The court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the state and kept in the state upon such terms and conditions as the order may prescribe.

(7) The rights of a member or manager to obtain information as provided in this section may be restricted in the initial operating agreement or in any subsequent amendment approved or adopted by all of the members or in compliance with any applicable requirements of the operating agreement. The provisions of this subsection shall not be construed to limit the ability to impose restrictions on the rights of a member or manager to obtain information by any other means permitted under this section.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

ARTICLE 4.

MANAGEMENT.

SEC.

- | | |
|------------|---|
| 79-29-401. | Management of a limited liability company by a manager or managers. |
| 79-29-402. | Repealed. |
| 79-29-403. | Reliance on reports and information. |
| 79-29-405. | Delegation of rights and powers to manage. |
| 79-29-407. | Resignation of manager. |

§ 79-29-401. Management of a limited liability company by a manager or managers.

(1) The certificate of formation or the operating agreement may delegate responsibility for managing a limited liability company to or among one or more managers to the extent provided therein. Managers may also serve as officers to the extent provided in the operating agreement.

(2) Managers need not be residents of this state or members of the limited liability company. The certificate of formation or the operating agreement may prescribe other qualifications for managers.

(3) The number of managers shall be fixed by or in the manner provided in the certificate of formation or the operating agreement. The number of managers may be increased or decreased by amendment to, or in the manner provided in, the certificate of formation or the operating agreement.

(4) Managers shall be elected by the members.

(5) Any vacancy occurring in the office of manager shall be filled by the vote of the members.

(6) All managers or any lesser number may be removed in the manner provided in the certificate of formation or the operating agreement. All managers or any lesser number may be removed with or without cause by the vote of the members required to elect such manager or managers.

(7) Any action required or permitted to be taken by the managers of a limited liability company may be taken upon a majority vote of the managers.

(8) An operating agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(9) Meetings of managers may be held by means of telephone or other communications equipment by means of which all persons participating in the meeting can speak to and hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

(10) The managers may take action on any matter that is to be voted on, consented to or approved by managers without a meeting, and without a vote with not less than one (1) but not more than ten (10) days' prior notice to all the managers if a consent or consents in writing, setting forth the action so taken, shall be signed by the managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all managers entitled to vote thereon were present and voted.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-401 [Laws, 1994, ch. 402, § 30, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to management of a limited liability company by a manager or managers. See Editor's Note under Chapter 29 heading.

§ 79-29-402. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-402. [Laws, 1994, ch. 402, § 31, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-402 was entitled: General standards of conduct for a manager. For present similar provisions, see § 79-29-403.

§ 79-29-403. Reliance on reports and information.

A member, manager, officer or liquidating trustee of a limited liability company shall be fully protected in relying in good faith upon:

(a) The records of the limited liability company; and upon

(b) Information, opinions, reports or statements, including, information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company, or the value and amount of assets, reserves, contracts, agreements or other

undertakings that would be sufficient to pay claims and obligations of the limited liability company or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions might properly be paid which are presented by:

- (i) Another manager of the limited liability company;
- (ii) A member of the limited liability company;
- (iii) A liquidating trustee of the limited liability company;
- (iv) An officer of the limited liability company;
- (v) An employee of the limited liability company;
- (vi) Committees of the limited liability company, members or managers; or
- (vii) Any other person as to matters the member, manager, officer or liquidating trustee reasonably believes is within such other person's professional or expert competence.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-403 [Laws, 1994, ch. 402, § 32, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to limitation of liability of members and managers. See Editor's Note under Chapter 29 heading.

§ 79-29-405. Delegation of rights and powers to manage.

(1) The manager of a limited liability company has the power and authority to delegate to one or more other persons the manager's rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of: (a) a member, (b) a manager or (c) the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons.

(2) Such delegation as provided in subsection (1) of this section shall not cause the manager to cease to be a manager of the limited liability company or cause the person to whom any such rights and powers have been delegated to be a manager of the limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-407. Resignation of manager.

An operating agreement may provide that a manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in an operating agreement and in accordance with the operating agreement. An operating agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. A manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation

of a manager violates an operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the operating agreement and offset the damages against the amount otherwise payable to the resigning manager.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

ARTICLE 5.

FINANCE.

SEC.

- | | |
|------------|---------------------------------|
| 79-29-501. | Form of contribution. |
| 79-29-502. | Repealed. |
| 79-29-503. | Liability for contributions. |
| 79-29-504. | Repealed. |
| 79-29-505. | Sharing of profits and losses. |
| 79-29-507. | Sharing of distributions. |
| 79-29-509. | Defense of usury not available. |

§ 79-29-501. Form of contribution.

The contribution of a member may be in cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-501 [Laws, 1994, ch. 402, § 33, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to forms of contributions of members. See Editor's Note under Chapter 29 heading.

§ 79-29-502. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-502. [Laws, 1994, ch. 402, § 34, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-502 was entitled: Liability for contributions. For present similar provisions, see § 79-29-503.

§ 79-29-503. Liability for contributions.

(1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing signed by the member.

(2) A member is obligated to the limited liability company to perform an enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company

to contribute cash equal to that portion of the value of the stated contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against the member under the operating agreement or applicable law.

(3) The obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by specific consent of all the members. However, a creditor of a limited liability company who extends credit, or otherwise acts in reliance on that obligation after the member signs a writing that reflects the obligation and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation to the same extent as the limited liability company could pursuant to this section. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(4) A certificate of formation or operating agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make, shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing the defaulting member's proportionate financial or governance interest in the limited liability company, subordinating the defaulting member's financial or governance interests to that of nondefaulting members, forcing a sale of the defaulting member's financial or governance interest, forfeiting the defaulting member's financial or governance interest, the lending by other members of the amount necessary to meet the defaulting member's commitment, fixing the value of the defaulting member's financial or governance interest by appraisal or by formula and redeeming or selling of the defaulting member's financial or governance interest at such value, or other penalty or consequence.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-503 [Laws, 1994, ch. 402, § 35, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to sharing of profits and losses. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-505.

§ 79-29-504. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-504. [Laws, 1994, ch. 402, § 36, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-504 was entitled: Sharing of distributions. For present similar provisions, see § 79-29-507.

§ 79-29-505. Sharing of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members who own financial interests and other owners of financial interests, and among groups or classes of members, in the manner provided in the certificate of formation or operating agreement. Profits and losses must be allocated on the basis of the agreed value, as stated in the limited liability company records required to be kept pursuant to Section 79-29-115, of the contributions made by each owner of a financial interest to the extent they have been received by the limited liability company and have not been returned.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-507. Sharing of distributions.

Distributions of cash or other assets of a limited liability company must be allocated among the members who own financial interests and other owners of financial interests, and among classes or groups of members, in the manner provided in the certificate of formation or operating agreement. Distributions must be made on the basis of the agreed value, as stated in the limited liability company records required to be kept pursuant to Section 79-29-115, of the contributions made by each member who owns a financial interest to the extent they have been received by the limited liability company and have not been returned.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-509. Defense of usury not available.

No obligation of a member, manager or officer of a limited liability company to the limited liability company arising under the operating agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a member, manager or officer, shall be subject to the defense of usury, and no member, manager or officer shall interpose the defense of usury with respect to any such obligation in any action.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

ARTICLE 6.**DISTRIBUTIONS.****SEC.**

- | | |
|------------|--|
| 79-29-601. | Distributions generally and interim distributions. |
| 79-29-602. | Repealed. |
| 79-29-603. | Distribution upon withdrawal of member. |
| 79-29-604. | Repealed. |
| 79-29-605. | Distribution in kind. |

| | |
|------------|--------------------------------------|
| 79-29-606. | Repealed. |
| 79-29-607. | Right to distribution. |
| 79-29-609. | Limitations on distribution. |
| 79-29-611. | Liability for wrongful distribution. |

§ 79-29-601. Distributions generally and interim distributions.

For purposes of this article, except for Section 79-29-611(1) which shall apply to any member, any reference to a member of a limited liability company in this article shall mean a member who owns a financial interest and shall not mean a member who does not own a financial interest or hold a financial right in the limited liability company.

Except as provided in this article, to the extent specified in the certificate of formation or the operating agreement and at the times or upon the occurrence of the events specified in the certificate of formation or operating agreement, a member is entitled to receive from a limited liability company distributions before the member's withdrawal from the limited liability company and before the dissolution and winding-up thereof.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-601 [Laws, 1994, ch. 402, § 37, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to interim distributions. See Editor's Note under Chapter 29 heading.

§ 79-29-602. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-602. [Laws, 1994, ch. 402, § 38, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-602 was entitled: Distribution upon dissociation. For present similar provisions, see § 79-29-603.

§ 79-29-603. Distribution upon withdrawal of member.

Except as provided in this article, upon withdrawal any withdrawing member is entitled to receive any distribution to which the member is entitled under an operating agreement and, if not otherwise provided in an operating agreement, the member is entitled to receive, within a reasonable time after withdrawal the fair value of the member's financial interest as of the date of withdrawal based upon the member's right to share in distributions from the limited liability company.

For purposes of this section the fair value of the member's financial interest shall be determined as of the date of withdrawal:

(a) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(b) Without discounting for lack of marketability or minority status.

The distribution must be accompanied by current financial statements of the limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-603 [Laws, 1994, ch. 402, § 39, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to distribution in kind. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-605.

§ 79-29-604. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-604. [Laws, 1994, ch. 402, § 40, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-604 was entitled: Right to distribution. For present similar provisions, see § 79-29-607.

§ 79-29-605. Distribution in kind.

A member, regardless of the nature of the person's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. A member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to the person exceeds a percentage of that asset which is equal to the percentage in which the person shares in distributions from the limited liability company. Except as provided in the operating agreement, a member may be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed is equal to a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-605 [Laws, 1994, ch. 402, § 41, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to limitations on distribution. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-609.

§ 79-29-606. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-604. [Laws, 1994, ch. 402, § 42, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-606 was entitled: Liability for wrongful distribution. For present similar provisions, see § 79-29-611.

§ 79-29-607. Right to distribution.

Subject to Sections 79-29-609 and 79-29-813, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-609. Limitations on distribution.

(1) No distribution may be made if, after giving effect to the distribution:

(a) The limited liability company would not be able to pay its debts as they become due in the usual course of business; or

(b) The limited liability company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution which are superior to the rights of the member receiving the distribution.

For purposes of this section, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) of this section either on:

(a) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(b) A fair valuation or other method that is reasonable under the circumstances.

(3) The effect of a distribution under subsection (1) of this section is measured as of: (a) the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or (b) the date payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Cross References — Applicability of this section to distributions to which § 79-29-813 applies, see § 79-29-813.

§ 79-29-611. Liability for wrongful distribution.

(1) A member or manager who votes for or assents to a distribution in violation of the certificate of formation or operating agreement or Section 79-29-609 is personally liable to the limited liability company for the amount of the distribution that exceeds what could have been distributed without

violating Section 79-29-609 or the certificate of formation or operating agreement if it is established that the member or manager did not act in compliance with Section 79-29-609. Each member or manager held liable under this subsection (1) is entitled to contribution:

(a) From each other member or manager who could be held liable under this subsection (1) for the unlawful distribution; and

(b) From each member for the amount the member received knowing that the distribution was made in violation of Section 79-29-605, the certificate of formation or the operating agreement.

(2)(a) A member who receives a distribution in violation of Section 79-29-609, and who knew at the time of the distribution that the distribution violated Section 79-29-609, shall be liable to a limited liability company for the amount of the distribution.

(b) A member who receives a distribution in violation of Section 79-29-609, and who did not know at the time of the distribution that the distribution violated Section 79-29-609, shall not be liable for the amount of the distribution.

(3) Subject to subsection (4) of this section, this section shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(4) Unless otherwise agreed, a member who either assents to or receives a distribution from a limited liability company shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of two (2) years from the date of the distribution unless an action to recover the distribution from the member is commenced before the expiration of the two-year period and an adjudication of liability against the member is made in the action.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

ARTICLE 7.

ASSIGNMENT OF FINANCIAL INTERESTS.

SEC.

- | | |
|------------|---|
| 79-29-701. | Nature of financial interest in a limited liability company. |
| 79-29-702. | Repealed. |
| 79-29-703. | Assignment of financial interest in a limited liability company. |
| 79-29-704. | Repealed. |
| 79-29-705. | Rights of creditor. |
| 79-29-707. | Right of assignee to become a member. |
| 79-29-709. | Powers of personal representative of deceased, incompetent or dissolved member. |
| 79-29-711. | Enforceability of limitations on assignments of financial interests. |

§ 79-29-701. Nature of financial interest in a limited liability company.

A financial interest in a limited liability company is intangible personal property. A member has no interest in specific limited liability company property.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-701 [Laws, 1994, ch. 402, § 43, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] provided a limited liability company interest is personal property. See Editor's Note under Chapter 29 heading.

§ 79-29-702. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-702. [Laws, 1994, ch. 402, § 44, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-702 was entitled: Assignment of limited liability company interest.

§ 79-29-703. Assignment of financial interest in a limited liability company.

(1) A financial interest is assignable, in whole or in part. The assignee of a member's financial interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in an operating agreement and upon:

(a) The approval of all of the members of the limited liability company other than the member assigning the financial interest; or

(b) Compliance with any procedure provided for in the operating agreement.

(2)(a) An assignment of a financial interest does not dissolve a limited liability company or entitle the assignee to become or to exercise any rights or powers of a member;

(b) An assignment of a financial interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(c) A member ceases to be a member, ceases to hold a governance interest, and ceases to have the power to exercise any rights or powers of a member upon assignment of all of the member's financial interest. The pledge of, or granting of, a security interest, lien or other encumbrance in or against, any or all of the financial interest of a member shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

(3) A member's interest in a limited liability company may be evidenced by a certificate issued by the limited liability company. An operating agreement

may provide for the assignment or transfer of any interest represented by such a certificate and make other provisions with respect to the certificates. A limited liability company shall not have the power to issue a certificate of an interest in a limited liability company in bearer form.

(4) Except to the extent assumed by written agreement until an assignee of a financial interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

(5) A limited liability company may acquire, by purchase, redemption or otherwise, any interest in the limited liability company. Any such interest so acquired by the limited liability company shall be deemed canceled.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-703 [Laws, 1994, ch. 402, § 45, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to rights of creditors. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-705.

§ 79-29-704. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-704. [Laws, 1994, ch. 402, § 46, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-704 was entitled: Right of assignee to become a member. For present similar provisions, see § 79-29-707.

§ 79-29-705. Rights of creditor.

(1) On application to a court of competent jurisdiction by a judgment creditor of a member, referred to in this section as the "judgment debtor," the court may charge the financial interest of the judgment debtor with payment of the unsatisfied amount of the judgment, with interest (referred to in this section as a "charging order"). To the extent so charged, the judgment creditor has only the rights of an assignee of the financial interest, however, the judgment creditor shall have no rights to bring a proceeding under Article 11 of this chapter. This article does not deprive any judgment debtor of the benefit of any exemption laws applicable to the judgment debtor's financial interest.

(2) A charging order constitutes a lien on the judgment debtor's financial interest.

(3) The entry of a charging order is the exclusive remedy by which a judgment creditor of a judgment debtor or its assignee may satisfy a judgment out of the judgment debtor's financial interest.

(4) No creditor of a judgment debtor or its assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

(5) The chancery court shall have jurisdiction to hear and determine any matter relating to any such charging order.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-705 [Laws, 1994, ch. 402, § 47, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the powers of estates of deceased or incompetent members. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-709.

§ 79-29-707. Right of assignee to become a member.

(1) An assignee of a financial interest may become a member with governance interests if and to the extent that: (a) the certificate of formation or operating agreement so provides; (b) all other members consent; or (c) in the case of an assignee of a member's entire financial interest in which, immediately following the assignment, the limited liability company otherwise would have no members, simultaneously with and upon the assignment of the interest to an assignee who agrees to become a member.

(2) An assignee who has become a member has, to the extent assigned, the governance rights and powers, and is subject to the restrictions and liabilities, of a member under the certificate of formation or operating agreement and this chapter. An assignee who becomes a member also is liable for the obligations of the assignee's assignor to make and return contributions as provided in Articles 5 and 6 of this chapter. However, the assignee is not obligated for liabilities or obligations unknown to the assignee at the time the assignee became a member and which could not be ascertained from the certificate of formation or the operating agreement.

(3) Whether or not an assignee of a financial interest becomes a member, the assignor is not released from the assignor's liability to the limited liability company under Articles 5 and 6 of this chapter.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-709. Powers of personal representative of deceased, incompetent or dissolved member.

(1) If a court of competent jurisdiction adjudges a member to be incompetent, the member's personal representative may exercise all rights until such time that the member's competency is regained, including the member's governance rights, on behalf of the member and any power under an operating agreement of an assignee to become a member.

(2) If a member who is an individual dies, a personal representative of the member's estate may exercise all rights for the purpose of settling the estate, including the governance rights that were held by such member at the time of the member's death and any power under an operating agreement of an assignee to become a member.

(3) If a member is a corporation, trust or other entity and such entity is dissolved, terminated or liquidated, the personal representative of the entity may exercise all rights and powers of that member until a successor is established, including the member's governance rights.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-711. Enforceability of limitations on assignments of financial interests.

Sections 75-9-406 and 75-9-408 do not apply to a member's financial interest in a domestic limited liability company, including the rights, powers and interests arising under the limited liability company's certificate of formation or operating agreement or under this chapter. To the extent of any conflict or inconsistency between this section and Sections 75-9-406 and 75-9-408, this section prevails. It is the express intent of this section to permit the enforcement, as an agreement among the members of a limited liability company, of any provision of an operating agreement that would otherwise be ineffective under Sections 75-9-406 and 75-9-408.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

ARTICLE 8.

DISSOLUTION.

| SEC. | |
|------------|---|
| 79-29-801. | Nonjudicial dissolution. |
| 79-29-802. | Repealed. |
| 79-29-803. | Judicial dissolution. |
| 79-29-804. | Repealed. |
| 79-29-805. | Decree; winding-up, liquidation, notification. |
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| 79-29-807. | Safekeeping by State Treasurer. |
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| 79-29-825. | Reinstatement following administrative dissolution. |
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§ 79-29-801. Nonjudicial dissolution.

(1) A limited liability company is dissolved and its affairs must be wound up upon the first of the following to occur:

- (a) At the time specified in the certificate of formation;
- (b) Upon the occurrence of the event specified in the certificate of formation or the written operating agreement;
- (c) Upon the consent of all members, or such lesser number as may be provided in the certificate of formation or operating agreement;

(d) At any time there are no members; provided, that the limited liability company is not dissolved and is not required to be wound up if:

(i) Within one hundred eighty (180) days or such other period as is provided for in the certificate of formation or operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company and to the admission of the personal representative of the member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; however, an operating agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or

(ii) A member is admitted to the limited liability company in the manner provided in the operating agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within one hundred eighty (180) days or such other period as is provided in the operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company.

(e) Upon the entry of a decree of judicial dissolution under Section 79-29-803.

(2) The following events with respect to any member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution:

- (a) Death;
- (b) Withdrawal;
- (c) Expulsion;
- (d) Bankruptcy;
- (e) Dissolution; or

(f) The occurrence of any other event that terminates the continued membership of any member.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-801 [Laws, 1994, ch. 402, § 48; Laws, 1998, ch. 376, § 6, eff from and after July 1, 1998; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to nonjudicial dissolution. See Editor's Note under Chapter 29 heading.

§ 79-29-802. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-802. [Laws, 1994, ch. 402, § 49, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-802 was entitled: Judicial dissolution. For present similar provisions, see § 79-29-803.

§ 79-29-803. Judicial dissolution.

[Effective until January 1, 2013, this section will read:]

(1) On application by or for a member, the chancery court for the county in which the registered office of the limited liability company is located may decree dissolution of a limited liability company:

(a) Whenever it is not reasonably practicable to carry on the business in conformity with the certificate of formation or the operating agreement;

(b) Whenever the managers or the members in control of the limited liability company have been guilty of or have knowingly countenanced persistent and pervasive fraud or abuse of authority, or the property of the limited liability company is being misapplied or wasted by such persons; or

(c) In a proceeding by the limited liability company to have its voluntary dissolution continued under court supervision.

(2) If a limited liability company has no members due to the expulsion or withdrawal of the last remaining member pursuant to the terms of the certificate of formation or the written operating agreement and the certificate of formation or the written operating agreement of the limited liability company prohibits the substitution of a member, then an officer, manager or any assignee or owner of a financial interest of the limited liability company or the personal representative of the member may apply to the chancery court to dissolve the limited liability company; provided however, that if there are no persons that hold the above described positions, then any creditor of the limited liability company or the Secretary of State may apply to the chancery court to dissolve the limited liability company.

(3) A court in a judicial proceeding brought to dissolve a limited liability company may appoint one or more receivers to wind-up and liquidate, or one or more custodians to manage, the business and affairs of the limited liability company. The court appointing a receiver or custodian has jurisdiction over the limited liability company and all its property wherever located. The court may appoint an individual or entity (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver (i) may dispose of all or any part of the assets of the limited liability company wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in the receiver's own

name as receiver of the limited liability company in all courts of this state; and

(b) The custodian may exercise all the powers of the limited liability company, through or in place of its members, managers or officers, to the extent necessary to manage the affairs of the limited liability company in the best interests of its members and creditors.

The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the limited liability company, its members and creditors.

The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the limited liability company or proceeds from the sale of the assets.

[Effective from and after January 1, 2013, this section will read:]

(1) On application by or for a member, the chancery court for the county in which the principal office of the limited liability company is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the limited liability company does not have a principal office in this state, may decree dissolution of a limited liability company:

(a) Whenever it is not reasonably practicable to carry on the business in conformity with the certificate of formation or the operating agreement;

(b) Whenever the managers or the members in control of the limited liability company have been guilty of or have knowingly countenanced persistent and pervasive fraud or abuse of authority, or the property of the limited liability company is being misapplied or wasted by such persons; or

(c) In a proceeding by the limited liability company to have its voluntary dissolution continued under court supervision.

(2) If a limited liability company has no members due to the expulsion or withdrawal of the last remaining member pursuant to the terms of the certificate of formation or the written operating agreement and the certificate of formation or the written operating agreement of the limited liability company prohibits the substitution of a member, then an officer, manager or any assignee or owner of a financial interest of the limited liability company or the personal representative of the member may apply to the chancery court to dissolve the limited liability company; however, if there are no persons that hold the above-described positions, then any creditor of the limited liability company or the Secretary of State may apply to the chancery court to dissolve the limited liability company.

(3) A court in a judicial proceeding brought to dissolve a limited liability company may appoint one or more receivers to wind-up and liquidate, or one or more custodians to manage, the business and affairs of the limited liability company. The court appointing a receiver or custodian has jurisdiction over the limited liability company and all its property wherever located. The court may appoint an individual or entity (authorized to transact business in this state)

as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver (i) may dispose of all or any part of the assets of the limited liability company wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in the receiver's own name as receiver of the limited liability company in all courts of this state; and

(b) The custodian may exercise all the powers of the limited liability company, through or in place of its members, managers or officers, to the extent necessary to manage the affairs of the limited liability company in the best interests of its members and creditors.

The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the limited liability company, its members and creditors.

The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the limited liability company or proceeds from the sale of the assets.

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 112, eff from and after Jan. 1, 2013.

Editor's Note — A former § 79-29-803 [Laws, 1994, ch. 402, § 50, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to winding up. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-809.

Amendment Notes — The 2012 amendment rewrote (1); and made minor stylistic changes in (2).

Cross References — Commencement of proceeding under this section to dissolve a professional limited liability company, see § 79-29-923.

§ 79-29-804. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-804. [Laws, 1994, ch. 402, § 51, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-804 was entitled: Agency power of managers or members after dissolution. For present similar provisions, see § 79-29-811.

§ 79-29-805. Decree; winding-up, liquidation, notification.

(1) If after a hearing the court determines that one or more grounds for judicial dissolution exist, it may enter a decree dissolving the limited liability company and specifying the effective date of the dissolution, and the clerk of

the court shall deliver a certified copy of the decree to the Secretary of State who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding-up and liquidation of the limited liability company's business and affairs in accordance with Section 79-29-809 and the notification of claimants in accordance with Sections 79-29-817 and 79-29-819.

(3) Nothing contained in this section shall diminish the inherent equity powers of the court to fashion alternative remedies to judicial dissolution.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-805 [Laws, 1994, ch. 402, § 52, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to distribution of assets. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-813.

§ 79-29-806. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.
§ 79-29-806. [Laws, 1994, ch. 402, § 53, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-806 was entitled: Known claims against dissolved limited liability company. For present similar provisions, see § 79-29-817.

§ 79-29-807. Safekeeping by State Treasurer.

Assets of a dissolved limited liability company that should be transferred to a creditor, claimant or member of the limited liability company who cannot be found shall be reduced to cash and deposited with the State Treasurer for safekeeping. When the creditor, claimant or member furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer shall pay such person or the person's personal representative that amount.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-807 [Laws, 1994, ch. 402, § 54, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to unknown claims against dissolved limited liability company. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-819.

§ 79-29-809. Winding-up.

(1) A manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than one (1) class or group of members, then by each class or group of members, in either case, by members who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate, may wind-up the limited liability company's affairs; but the chancery court upon cause shown, may wind-up the limited

liability company's affairs upon application of any member or manager, the member's or manager's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

(2) Upon dissolution of a limited liability company, the persons winding-up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members and managers and without imposing liability on a liquidating trustee.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-811. Agency power of managers, officers or members after dissolution.

(1) Except as provided in subsections (3), (4) and (5) of this section, after an event causing dissolution of the limited liability company, any member can bind the limited liability company:

(a) By any act appropriate for winding-up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the certificate of dissolution shall be presumed to constitute notice of dissolution for purposes of subsection (1)(b) of this section.

(3) An act of a manager, officer or member which is not binding on the limited liability company pursuant to subsection (1) of this section is binding if it is otherwise authorized by the limited liability company.

(4) An act of a manager, officer or member which would be binding under subsection (1) or would be otherwise authorized but which is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

(5) If the certificate of formation or the operating agreement vests management of the limited liability company in a manager or managers, the manager or managers shall have the authority of a member provided for in subsection (1) of this section, and no member shall have such authority if the member is acting solely in the capacity of a member.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-813. Distribution of assets.

(1) Upon the winding-up of a limited liability company, the assets shall be distributed as follows:

(a) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment thereof, other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members and former members under Section 79-29-601 or Section 79-29-603;

(b) To members and former members in satisfaction of liabilities for distributions under Section 79-29-601 or Section 79-29-603; and

(c) To members first for the return of their contributions and second respecting their financial interests, in the proportions in which the members share in distributions.

(2) A limited liability company which has dissolved:

(a) Shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited liability company;

(b) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited liability company which is the subject of a pending action, suit or proceeding to which the limited liability company is a party; and

(c) Shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or that have not arisen but that, based on facts known to the limited liability company, are likely to arise or to become known to the limited liability company within three (3) years after the date of dissolution.

If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor. Any remaining assets shall be distributed as provided in this chapter. Any liquidating trustee winding-up a limited liability company's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding-up the limited liability company.

(3) A member who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that the distribution violated subsection (1) of this section, shall be liable to the limited liability company for the amount of the distribution. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. Subject to

subsection (4) of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(4) Unless otherwise agreed, a member who receives a distribution from a limited liability company to which this section applies shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of two (2) years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said two-year period and an adjudication of liability against such member is made in the said action.

(5) Section 79-29-609 shall not apply to a distribution to which this section applies.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-815. Trustees or receivers for limited liability companies; appointment; powers; duties.

When the certificate of formation of any limited liability company formed under this chapter shall be dissolved by the filing of a certificate of dissolution, the chancery court, on application of any creditor, member or manager of the limited liability company, or any other person who shows good cause therefor, at any time, may either appoint one or more of the managers of the limited liability company to be trustees, or appoint one or more persons to be receivers, of and for the limited liability company, to take charge of the limited liability company's property, and to collect the debts and property due and belonging to the limited liability company, with the power to prosecute and defend, in the name of the limited liability company, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the limited liability company, if in being, that may be necessary for the final settlement of the unfinished business of the limited liability company. The powers of the trustees or receivers may be continued as long as the chancery court shall think necessary for the purposes aforesaid.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-817. Known claims against dissolved limited liability company.

(1) A dissolved limited liability company may dispose of the known claims against it by filing a certificate of dissolution pursuant to Section 79-29-205 and following the procedure described in this section.

(2) The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:

- (a) Describe information that must be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty (120) days from the latter of the mailing date of the written notice or the filing of a certificate of dissolution pursuant to Section 79-29-205, by which the dissolved limited liability company must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved limited liability company is barred:

(a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved limited liability company by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within ninety (90) days from the date the claimant receives notice of the rejection of the claim.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-819. Unknown claims against dissolved limited liability company.

[Effective until January 1, 2013, this section will read:]

(1) A dissolved limited liability company may publish notice of its dissolution pursuant to this section which requests that persons with claims against the limited liability company present them in accordance with the notice.

(2) The notice must:

(a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office, or, if none in this state, its registered office, is or was last located;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the limited liability company not otherwise barred will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the latter of the publication of the notice or the filing of a certificate of dissolution with respect to the limited liability company.

(3) If the dissolved limited liability company publishes a newspaper notice in accordance with subsection (2) and files a certificate of dissolution pursuant to Section 79-29-205, the claim of each of the following claimants which is not otherwise barred is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within three (3) years after the latter of the publication date of the newspaper notice or the filing of the certificate of dissolution:

(a) A claimant who did not receive written notice under Section 79-29-817;

(b) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on within the three-year period; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved limited liability company, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the assets of the limited liability company distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member, subject to Section 79-29-611(1).

[Effective from and after January 1, 2013, this section will read:]

(1) A dissolved limited liability company may publish notice of its dissolution pursuant to this section which requests that persons with claims against the limited liability company present them in accordance with the notice.

(2) The notice must:

(a) Be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office is or was last located, or in Hinds County if the limited liability company does or did not have a principal office in this state;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the limited liability company not otherwise barred will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the latter of the publication of the notice or the filing of a certificate of dissolution with respect to the limited liability company.

(3) If the dissolved limited liability company publishes a newspaper notice in accordance with subsection (2) and files a certificate of dissolution pursuant to Section 79-29-205, the claim of each of the following claimants which is not otherwise barred is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within three (3) years after the latter of the publication date of the newspaper notice or the filing of the certificate of dissolution:

(a) A claimant who did not receive written notice under Section 79-29-817;

(b) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on within the three-year period; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved limited liability company, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the assets of the limited liability company distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member, subject to Section 79-29-611(1).

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 113, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment rewrote (2)(a).

§ 79-29-821. Grounds for administrative dissolution.

The Secretary of State may commence a proceeding under Section 79-29-823 to administratively dissolve a limited liability company if:

(a) The limited liability company does not pay within sixty (60) days after they are due any fees imposed by this chapter or other law;

(b) The limited liability company does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(c) The limited liability company is without a registered agent in this state for sixty (60) days or more;

(d) The limited liability company does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or that its registered agent has resigned; or

(e) The Department of Revenue notifies the Secretary of State that the limited liability company is delinquent in any payments or tax owed by the limited liability company to the State of Mississippi; or

(f) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the limited liability company to the Secretary of State pursuant to this chapter.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-823. Procedure for administrative dissolution.

[Effective until January 1, 2013, this section will read:]

(1) If the Secretary of State determines that one or more grounds exist under Section 79-29-821 for administratively dissolving a limited liability company, the Secretary of State shall serve the limited liability company with written notice of the determination under Section 79-29-125, except that such determination may be served by first class mail.

(2) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the service of the notice, the Secretary of State shall administratively dissolve the limited liability company by signing a certification of the administrative dissolution that recites the ground or

grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate of administrative dissolution and serve the limited liability company with a copy of the certificate of administrative dissolution under Section 79-29-125, except that such certificate of administrative dissolution may be served by first class mail.

[Effective from and after January 1, 2013, this section will read:]

(1) If the Secretary of State determines that one or more grounds exist under Section 79-29-821 for administratively dissolving a limited liability company, the Secretary of State shall serve the limited liability company with written notice of the determination under Section 79-35-13, except that such determination may be served by first-class mail.

(2) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the service of the notice, the Secretary of State shall administratively dissolve the limited liability company by signing a certification of the administrative dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate of administrative dissolution and serve the limited liability company with a copy of the certificate of administrative dissolution under Section 79-35-13, except that such certificate of administrative dissolution may be served by first-class mail.

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 114, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment substituted “79-35-13” for “79-29-125” preceding “except that such” in (1) and (2).

§ 79-29-825. Reinstatement following administrative dissolution.

[Effective until January 1, 2013, this section will read:]

(1) A limited liability company administratively dissolved under Section 79-29-823 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must:

(a) Recite the name of the limited liability company and the effective date of its administrative dissolution;

(b) State that the ground or grounds for administrative dissolution either did not exist or have been eliminated; and

(c) State that the limited liability company’s name satisfies the requirements of Section 79-29-109.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, the Secretary of State shall cancel the certificate of administrative dissolution and prepare a certificate of reinstatement that recites this deter-

mination and the effective date of reinstatement, file the original of the certificate of reinstatement, and serve the limited liability company with a copy of the certificate of reinstatement under Section 79-29-125, except that such certificate of reinstatement may be served by first class mail.

(3) When the reinstatement is effective:

(a) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution;

(b) Any liability incurred by the limited liability company or a member after the administrative dissolution and before the reinstatement shall be determined as if the administrative dissolution had never occurred; and

(c) The limited liability company may resume carrying on its business as if the administrative dissolution had never occurred.

[Effective from and after January 1, 2013, this section will read:]

(1) A limited liability company administratively dissolved under Section 79-29-823 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must:

(a) Recite the name of the limited liability company and the effective date of its administrative dissolution;

(b) State that the ground or grounds for administrative dissolution either did not exist or have been eliminated; and

(c) State that the limited liability company's name satisfies the requirements of Section 79-29-109.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, the Secretary of State shall cancel the certificate of administrative dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate of reinstatement, and serve the limited liability company with a copy of the certificate of reinstatement under Section 79-35-13, except that such certificate of reinstatement may be served by first-class mail.

(3) When the reinstatement is effective:

(a) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution;

(b) Any liability incurred by the limited liability company or a member after the administrative dissolution and before the reinstatement shall be determined as if the administrative dissolution had never occurred; and

(c) The limited liability company may resume carrying on its business as if the administrative dissolution had never occurred.

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 115, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment substituted “79-35-13” for “79-29-125” near the end of (2).

§ 79-29-827. Appeal from denial of reinstatement.

[Effective until January 1, 2013, this section will read:]

(1) If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited liability company under Section 79-29-125 with a record that explains the reason or reasons for denial, except that such record may be served by first class mail.

(2) The limited liability company may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County, Mississippi, or the chancery court where the limited liability company is domiciled within thirty (30) days after service of the notice of denial is perfected. The limited liability company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of administrative dissolution, the limited liability company's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved limited liability company or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

[Effective from and after January 1, 2013, this section will read:]

(1) If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited liability company under Section 79-35-13 with a record that explains the reason or reasons for denial, except that such record may be served by first-class mail.

(2) The limited liability company may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County or the chancery court where the limited liability company is domiciled within thirty (30) days after service of the notice of denial is perfected. The limited liability company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of administrative dissolution, the limited liability company's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved limited liability company or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 116, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment substituted "79-35-13" for "79-29-125" following "Section" in (1); and deleted "Mississippi" preceding "or the chancery court where the limited liability company" in (2).

§ 79-29-829. Revocation of dissolution.

Notwithstanding the occurrence of an event set forth in Section 79-29-801(1)(a), (b), (c) or (d) of this chapter, the limited liability company shall not be dissolved and its affairs shall not be wound up if, within one hundred twenty (120) days of the effective date of the dissolution:

(a) The limited liability company is continued pursuant to the affirmative majority vote or consent of all remaining members of the limited liability company or the personal representative of the last remaining member of the limited liability company if there is no remaining member, and any other person whose approval is required under the operating agreement to revoke a dissolution pursuant to this section; however, if the dissolution was caused by a vote or consent, the dissolution shall not be revoked unless each member and other person, or their respective personal representatives, who voted in favor of, or consented to, the dissolution has voted or consented to continue the limited liability company. If there is no remaining member of the limited liability company and the personal representative of the last remaining member votes in favor of or consents to the continuation of the limited liability company, the personal representative shall be required to agree in writing to the admission of the personal representative of the member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; and

(b) The limited liability company delivers to the Secretary of State for filing a certificate of revocation of dissolution, together with a copy of certificate of dissolution, that sets forth:

- (i) The name of the limited liability company;
- (ii) The effective date of the dissolution that was revoked; and
- (iii) The date that the revocation of dissolution was authorized.

(c) The revocation of dissolution is effective upon the date of the certificate of revocation of dissolution is filed, but the revocation shall relate back to and take effect as of the effective date of the dissolution and any liability incurred by the limited liability company or a member after the dissolution and before the revocation shall be determined as if the dissolution had never occurred; and the limited liability company may resume or continue carrying on its business as if the dissolution had never occurred.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in the first sentence of (a) was corrected by deleting "and" preceding "however, if the dissolution."

§ 79-29-831. Effect of dissolution.

(1) The dissolution of a limited liability company does not terminate the authority of the registered agent of the limited liability company.

(2) The administrative dissolution of a limited liability company shall not impair the validity of any contract, deed, mortgage, security interest, lien or act of such limited liability company or prevent such limited liability company from defending any action, suit or proceeding with any court of this state.

(3) A member, manager or officer of a limited liability company is not liable for the debts, obligations or liabilities of such limited liability company solely by reason of the administrative dissolution of a limited liability company.

(4) A limited liability company that has been administratively dissolved may not maintain any action, suit or proceeding in any court of this state until such limited liability company is reinstated. An action, suit or proceeding may not be maintained in any court of this state by any successor or assignee of such limited liability company on any right, claim or demand arising out of the transaction of business by such limited liability company after the administrative dissolution.

(5) A limited liability company that is dissolved pursuant to Section 79-29-801 or 79-29-803 continues its legal existence but may carry on only business necessary or appropriate to wind-up and liquidate its business and affairs under Section 79-29-809 and to notify claimants under Sections 79-29-817 and 79-29-819.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Joint Legislative Committee Note — A typographical error in subsection (2) of this section has been corrected by substituting “...shall not impair the validity of any contract...” for “...shall not impair the validity on any contract...”. The Joint Legislative Committee on Compilation, Revision and Publication ratified the correction at its July 22, 2010, meeting.

ARTICLE 9.

PROFESSIONAL LIMITED LIABILITY COMPANIES.

SEC.

- | | |
|------------|---|
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§ 79-29-901. Applicability of remaining articles of chapter.

The other provisions of this chapter apply to professional limited liability companies, both domestic and foreign, to the extent not inconsistent with the provisions of this article.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-901 [Laws, 1994, ch. 402, § 55; Laws, 1995, ch. 494, § 36, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the applicability of the remaining articles of the chapter. See Editor's Note under Chapter 29 heading.

§ 79-29-902. Article definitions.

As used in this article, unless the context requires otherwise:

(a) "Disqualified person" means an individual, general partnership, professional limited liability company, professional limited liability partnership or other entity that for any reason is or becomes ineligible under this article to be a member of a professional limited liability company.

(b) "Domestic professional limited liability company" means a professional limited liability company.

(c) "Foreign professional limited liability company" means a limited liability company formed for the purpose of rendering professional services under a law other than the law of this state.

(d) "Law" includes rules promulgated in accordance with Section 79-29-929.

(e) "Licensing authority" means the office, board, agency, court or other authority in this state empowered to license or otherwise authorize the rendition of a professional service.

(f) "Professional limited liability company" means a limited liability company, other than a foreign professional limited liability company, subject to the provisions of this article.

(g) "Professional service" means a service that may be lawfully rendered only by a person licensed or otherwise authorized by a licensing authority in this state to render the service, including, without limitation, certified public

accountants, dentists, architects, veterinarians, osteopaths, physicians, surgeons and attorneys at law.

(h) “Qualified person” means an individual, general partnership, professional limited liability company, professional limited liability partnership or other entity that is eligible under this article to be a member of a professional limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor’s Note — A former § 79-29-902 [Laws, 1994, ch. 402, § 56; Laws, 1995, ch. 494, § 37, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to article definitions. See Editor’s Note under Chapter 29 heading.

§ 79-29-903. Election of professional limited liability company status.

(1) One or more persons may form a professional limited liability company by delivering to the Secretary of State for filing a certificate of formation which includes a statement that: (a) it is a professional limited liability company; and (b) its purpose is to render the specified professional services.

(2) Nothing in this article shall be construed to require a person rendering professional services in this state to render such services through a professional limited liability company or foreign professional limited liability company unless a law of this state other than this article so requires.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor’s Note — A former § 79-29-903 [Laws, 1994, ch. 402, § 57; Laws, 1995, ch. 494, § 38, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the election of professional limited liability company status. See Editor’s Note under Chapter 29 heading.

§ 79-29-904. Purposes.

(1) Except to the extent authorized by subsection (2), a limited liability company may elect professional limited liability company status under Section 79-29-903, solely for the purpose of rendering professional services, including services ancillary to them, and solely within a single profession.

(2) A limited liability company may elect professional limited liability company status under Section 79-29-903 for the purpose of rendering professional services within two (2) or more professions, and for the purpose of engaging in any lawful business authorized by Section 79-29-117(1) to the extent the combination of professional purposes or of professional and business purposes is not prohibited by the licensing law of this state applicable to each profession in the combination.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-904 [Laws, 1994, ch. 402, § 58; Laws, 1995, ch. 494, § 39, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the purposes of electing professional limited liability company status. See Editor's Note under Chapter 29 heading.

§ 79-29-905. General powers.

(1) Except as provided in subsection (2) of this section, a professional limited liability company has the powers enumerated in Section 79-29-117(2).

(2) A professional limited liability company may be a promoter, general partner, member, associate or manager of a partnership, joint venture, trust or other entity only if the entity is engaged solely in rendering professional services or in carrying on business authorized by the professional limited liability company's certificate of formation and not prohibited by the licensing laws applicable to each profession rendering services through the professional limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-905 [Laws, 1994, ch. 402, § 59; Laws, 1995, ch. 494, § 40, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the general powers of a professional limited liability company. See Editor's Note under Chapter 29 heading.

§ 79-29-906. Rendering professional services.

(1) A domestic or foreign limited liability company may render professional services in this state only through individuals licensed or otherwise authorized in this state to render the services.

(2) Subsection (1) of this section does not:

(a) Require an individual employed by a professional limited liability company to be licensed to perform services for the limited liability company if a license is not otherwise required;

(b) Prohibit a licensed individual from rendering professional services in the individual's capacity although the individual is a member, manager, employee or agent of a domestic or foreign professional limited liability company;

(c) Prohibit an individual licensed in another state from rendering professional services for a domestic or foreign professional limited liability company in this state if not prohibited by the licensing authority.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-906 [Laws, 1994, ch. 402, § 60; Laws, 1995, ch. 494, § 41, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the rendering of professional services by domestic or foreign limited liability company. See Editor's Note under Chapter 29 heading.

§ 79-29-907. Prohibited activities.

(1) A professional limited liability company may not render any professional service other than the professional service authorized by its certificate of formation.

(2) Subsection (1) of this section does not prohibit a professional limited liability company from investing its funds in real estate, mortgages, securities, or any other type of investment or from owning real or personal property appropriate for carrying on its business.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-907 [Laws, 1994, ch. 402, § 61; Laws, 1995, ch. 494, § 42, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to prohibited activities. See Editor's Note under Chapter 29 heading.

§ 79-29-908. Corporate name.

(1) The name of a domestic professional limited liability company and of a foreign professional limited liability company authorized to transact business in this state, in addition to satisfying the requirements of Sections 79-29-109 and 79-29-1007:

(a) Must contain the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC";

(b) May not contain language stating or implying that it is formed for a purpose other than that authorized by Section 79-29-904 and its certificate of formation; and

(c) Must conform with any rule promulgated by the licensing authority having jurisdiction over a professional service described in the limited liability company's certificate of formation.

(2) Sections 79-29-109 and 79-29-1007 do not prevent the use of a name otherwise prohibited by those sections if it is the personal name of a member or former member of the domestic or foreign professional limited liability company or the name of an individual who was associated with a predecessor of the limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-908 [Laws, 1994, ch. 402, § 62; Laws, 1995, ch. 494, § 43, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the corporate name of a professional limited liability company. See Editor's Note under Chapter 29 heading.

§ 79-29-909. Who may become members.

(1) No professional limited liability company organized under the provisions of this article may have as a member any person other than:

(a) Individuals who are authorized by law in this or another state to render a professional service described in the limited liability company's certificate of formation;

(b) A professional limited liability company, domestic or foreign, authorized by law in this state to render a professional service described in the limited liability company's certificate of formation;

(c) General partnerships in which all the partners are individuals or entities otherwise authorized by paragraph (a), (b) or (d) of this subsection (1) to be members of a professional limited liability company under this article;

(d) A professional limited liability partnership, domestic or foreign, authorized by law in this state to render a professional service described in the limited liability partnership's certificate of registration;

(e) Any other individual or entity not included in paragraph (a), (b), (c) or (d) of this subsection (1) if expressly authorized by the licensing authority having jurisdiction over the professional services described in the certificate of formation of the professional limited liability company.

(2) A licensing authority with jurisdiction over a profession may by rule restrict or condition, or revoke in part, the authority of a professional limited liability company subject to its jurisdiction to issue membership interests. A rule promulgated under this section does not, of itself, make a member of a professional limited liability company at the time the rule becomes effective a disqualified person.

(3) The certificate of formation may provide for additional limitations and restrictions on members or for additional qualifications of members and such limitations, restrictions or qualifications shall be valid and enforceable in each instance.

(4) Membership interests issued in violation of this section or a rule promulgated under this section are void.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-909 [Laws, 1994, ch. 402, § 63; Laws, 1995, ch. 494, § 44, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to who may become a member. See Editor's Note under Chapter 29 heading.

§ 79-29-910. Membership interest transfer restrictions.

(1) A member of a professional limited liability company may transfer the member's membership interests only to qualified persons. Unless otherwise prohibited by the certificate of formation or operating agreement, a member of a professional limited liability company may pledge the member's membership interest to a qualified person or to a disqualified person.

(2) A transfer of a membership interest made in violation of subsection (1), except one made by operation of law or court judgment, is void.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-910 [Laws, 1994, ch. 402, § 64; Laws, 1995, ch. 494, § 45, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to membership interest transfer restrictions. See Editor's Note under Chapter 29 heading.

§ 79-29-911. Compulsory acquisition of membership interests after death or disqualification of a member.

(1) A professional limited liability company must acquire, or cause to be acquired by a qualified person, a member's membership interest if:

(a) The member dies and the successor in interest to the deceased member is not a qualified person, except as provided in subsection (3) of this section;

(b) The member becomes a disqualified person, except as provided in subsection (3) of this section; or

(c) The membership interest is transferred by operation of law or court judgment to a disqualified person, except as provided in subsection (3) of this section.

(2) If a price for the membership interest is established in accordance with the certificate of formation or written operating agreement or by private agreement, that price controls. If the price is not so established, the limited liability company shall acquire the membership interest in accordance with Section 79-29-912. If the disqualified person rejects the limited liability company's purchase offer made pursuant to Section 79-29-912, either the person or the limited liability company may commence a proceeding under Section 79-29-913 to determine the price of the membership interest.

(3) This section does not require the acquisition of membership interests in the event of disqualification if the disqualification lasts no more than five (5) months from the date the disqualification or transfer occurs. A member who becomes a disqualified person shall notify the limited liability company promptly.

(4) This section and Section 79-29-912 do not prevent or relieve a professional limited liability company from paying pension benefits or other deferred compensation for services rendered to a former member if otherwise permitted by law.

(5) A provision for the acquisition of membership interests contained in a professional limited liability company's certificate of formation or operating agreement, or in a private agreement, is specifically enforceable.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-911 [Laws, 1994, ch. 402, § 65; Laws, 1995, ch. 494, § 46, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to compulsory acquisition of membership interests after death or disqualification of a member. See Editor's Note under Chapter 29 heading.

§ 79-29-912. Acquisition procedure.

(1) If membership interests must be acquired under Section 79-29-911, the professional limited liability company shall deliver a written notice to the executor or administrator of the estate of its deceased member, or to the disqualified person or transferee, offering to purchase the membership interest at a price the limited liability company believes represents the membership interests' fair value as of the date of death, disqualification or transfer. The offer notice must be accompanied by the limited liability company's balance sheet for the most recent fiscal year ending prior to the date of death or disqualification, an income statement for that fiscal year, a reconciliation of members' capital accounts for that fiscal year, and the latest available interim financial statements, if any.

(2) The disqualified person has thirty (30) days from the effective date of the notice to accept the limited liability company's offer or demand that the limited liability company commence a proceeding under Section 79-29-913 to determine the fair value of the disqualified person's membership interest. If the individual accepts the offer, the limited liability company shall make payment for the membership interests within sixty (60) days from the effective date of the offer notice (unless a later date is agreed on) upon the disqualified person's surrender of the disqualified person's membership interest to the limited liability company.

(3) After the limited liability company makes payment for the membership interest, the disqualified person has no further interest in the limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-912 [Laws, 1994, ch. 402, § 66; Laws, 1995, ch. 494, § 47, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to acquisition procedures. See Editor's Note under Chapter 29 heading.

Cross References — Substitution of the term "book value" for "fair value" in this section for professional limited liability companies in existence on July 1, 1995, see § 79-29-933.

§ 79-29-913. Court action to appraise membership interests.

[Effective until January 1, 2013, this section will read:]

(1) If the disqualified member does not accept the professional limited liability company's offer under Section 79-29-912(2) within the thirty-day period, the member during the following thirty-day period may deliver a written notice to the limited liability company demanding that it commence a proceeding to determine the fair value of the membership interest. The limited liability company may commence a proceeding at any time during the sixty (60) days following the effective date of its offer notice. If it does not do so, the member may commence a proceeding against the limited liability company to determine the fair value of the disqualified person's membership interest.

(2) The limited liability company or disqualified member shall commence the proceeding in the chancery court of the county where the limited liability company's principal office, or, if none in this state, its registered office, is located. The limited liability company shall make the disqualified person a party to the proceeding as in an action against the disqualified person's membership interest. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the power described in the order appointing them, or in any amendment to it.

(4) The disqualified member is entitled to judgment for the fair value of the disqualified person's membership interest determined by the court as of the date of death, disqualification or transfer, together with interest from that date at a rate found by the court to be fair and equitable.

(5) The court may order the judgment paid in installments determined by the court.

(6) "Fair value" means the value of the membership interest of the professional limited liability company determined:

(a) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(b) Without discounting for lack of marketability or minority status.

[Effective from and after January 1, 2013, this section will read:]

(1) If the disqualified member does not accept the professional limited liability company's offer under Section 79-29-912(2) within the thirty-day period, the member during the following thirty-day period may deliver a written notice to the professional limited liability company demanding that it commence a proceeding to determine the fair value of the membership interest. The professional limited liability company may commence a proceeding at any time during the sixty (60) days following the effective date of its offer notice. If it does not do so, the member may commence a proceeding against the professional limited liability company to determine the fair value of the disqualified person's membership interest.

(2) The professional limited liability company or disqualified member shall commence the proceeding in the chancery court of the county where the professional limited liability company's principal office is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the professional limited liability company does not have a principal office in this state. The professional limited liability company shall make the disqualified person a party to the proceeding as in an action against the disqualified person's membership interest. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers

have the power described in the order appointing them, or in any amendment to it.

(4) The disqualified member is entitled to judgment for the fair value of the disqualified person's membership interest determined by the court as of the date of death, disqualification or transfer, together with interest from that date at a rate found by the court to be fair and equitable.

(5) The court may order the judgment paid in installments determined by the court.

(6) "Fair value" means the value of the membership interest of the professional limited liability company determined:

(a) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(b) Without discounting for lack of marketability or minority status.

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 117, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section. In the section as effective January 1, 2013, in the second sentence in (1), "professional" was inserted preceding "limited liability company." The Joint Committee ratified the correction at its August 16, 2012, meeting.

Editor's Note — A former § 79-29-913 [Laws, 1995, ch. 494, § 48, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to court action to appraise membership interests. See Editor's Note under Chapter 29 heading.

Amendment Notes — The 2012 amendment rewrote (2); and inserted "professional" preceding "limited liability company" throughout the section.

Cross References — Substitution of the term "book value" for "fair value" in this section for professional limited liability companies in existence on July 1, 1995, see § 79-29-933.

§ 79-29-914. Court costs and fees of experts.

(1) The court in an appraisal proceeding commenced under Section 79-29-913 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court, and shall assess the costs against the professional limited liability company. But the court may assess costs against the disqualified member, in an amount the court finds equitable, if the court finds the member acted arbitrarily, vexatiously or not in good faith in refusing to accept the limited liability company's offer.

(2) The court may also assess the fees and expenses of counsel and experts for the disqualified member against the limited liability company and in favor of the disqualified member if the court finds that the fair value of the disqualified member's membership interest substantially exceeded the amount offered by the limited liability company or that the limited liability company did not make an offer.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-914 [Laws, 1995, ch. 494, § 49, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to court costs and fees of experts. See Editor's Note under Chapter 29 heading.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in (2) was corrected by inserting the word "the" preceding "disqualified member's membership interest."

Cross References — Substitution of the term "book value" for "fair value" in this section for professional limited liability companies in existence on July 1, 1995, see § 79-29-933.

§ 79-29-915. Cancellation of disqualified membership interests.

If the membership interest of a disqualified person is not acquired under Section 79-29-912 or 79-29-913 within ten (10) months after the death of the member or within five (5) months after the disqualification or transfer, the professional limited liability company shall immediately cancel the membership interest on its books and the disqualified person has no further interest as a member in the limited liability company other than the disqualified member's right to payment of the fair value of the membership interest under Section 79-29-912 or 79-29-913.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-915 [Laws, 1995, ch. 494, § 50, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to cancellation of disqualified membership interests. See Editor's Note under Chapter 29 heading.

§ 79-29-917. Voting of membership interests.

(1) Only a qualified person may be appointed a proxy to vote the membership interest of a professional limited liability company.

(2) A voting trust with respect to membership interests of a professional limited liability company is not valid unless all of its trustees and beneficiaries are qualified persons. If a beneficiary who is a qualified person dies or becomes disqualified, a voting trust valid under this subsection continues to be valid for ten (10) months after the date of death or for five (5) months after the disqualification occurred.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-917 [Laws, 1995, ch. 494, § 51, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to voting of membership interests. See Editor's Note under Chapter 29 heading.

§ 79-29-918. Confidential relationship.

(1) The relationship between an individual rendering professional services as an employee of a domestic or foreign professional limited liability company and the individual's client or patient is the same as if the individual were rendering the services as a sole practitioner.

(2) The relationship between a domestic or foreign professional limited liability company and the client or patient for whom its employee is rendering professional services is the same as that between the client or patient and the employee.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-918 [Laws, 1995, ch. 494, § 52, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the confidential nature of the relationship between employee of professional limited liability company rendering professional services and his client. See Editor's Note under Chapter 29 heading.

§ 79-29-919. Privileged communications.

A privilege applicable to communications between an individual rendering professional services and the person receiving the services recognized under the statute or common law of this state is not affected by this article. The privilege applies to a domestic or foreign professional limited liability company and to its employees in all situations in which it applies to communications between an individual rendering professional services on behalf of the limited liability company and the person receiving the services.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-919 [Laws, 1995, ch. 494, § 53, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to privileged communications. See Editor's Note under Chapter 29 heading.

§ 79-29-920. Responsibility for professional services.

(1) Each individual who renders professional services as an employee of a domestic or foreign professional limited liability company is liable for a negligent or wrongful act or omission in which the member personally participates to the same extent as if the member rendered the services as a sole practitioner. A member or an employee of a domestic or foreign professional limited liability company is not liable, however, for the conduct of other members or employees of the limited liability company, except a person under the member's direct supervision and control, while rendering professional services on behalf of the professional limited liability company to the person for whom such professional services were being rendered.

(2) A domestic or foreign professional limited liability company whose employees perform professional services within the scope of their employment

or of their apparent authority to act for the limited liability company is liable to the same extent as its employees.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-920 [Laws, 1995, ch. 494, § 54, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the responsibility for professional services rendered by employee of professional limited liability company. See Editor's Note under Chapter 29 heading.

RESEARCH REFERENCES

ALR. Construction and Application of Limited Liability Company Acts — Issues Relating to Liability of Limited Liability Company for Acts of Its Members, Managers, Officers, and Agents. 46 A.L.R.6th 1.

Construction and Application of Limited Liability Company Acts — Issues Relating to Liability of Limited Liability Company for Acts of Its Members, Managers, Officers, and Agents. 47 A.L.R.6th 1.

§ 79-29-921. Merger.

(1) If all the members of the disappearing and surviving limited liability companies, unless prohibited by certificate of formation or the operating agreement, are qualified to be members of the surviving limited liability company, a professional limited liability company may merge with another domestic or foreign professional limited liability company or with a domestic or foreign limited liability company.

(2) If the surviving limited liability company is to render professional services in this state, it must comply with this article.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-921 [Laws, 1995, ch. 494, § 55, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to merger. See Editor's Note under Chapter 29 heading.

§ 79-29-922. Termination of professional activities.

If a professional limited liability company ceases to render professional services, it must amend its certificate of formation to delete references to rendering professional services and to conform its name to the requirements of Section 79-29-109. After the amendment becomes effective the limited liability company may continue in existence as a limited liability company under this chapter other than the provisions of this article.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-922 [Laws, 1995, ch. 494, § 56, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to termination of professional activities. See Editor's Note under Chapter 29 heading.

§ 79-29-923. Judicial dissolution.

[Effective until January 1, 2013, this section will read:]

The Attorney General may commence a proceeding under Section 79-29-803 to dissolve a professional limited liability company if:

(a) The Secretary of State or a licensing authority with jurisdiction over a professional service described in the limited liability company's certificate of formation serves written notice on the limited liability company under Section 79-29-125 that it has violated or is violating a provision of this article;

(b) The limited liability company does not correct each alleged violation, or demonstrate to the reasonable satisfaction of the Secretary of State or licensing authority that it did not occur, within sixty (60) days after service of the notice is perfected under Section 79-29-125; and

(c) The Secretary of State or licensing authority certifies to the Attorney General a description of the violation, that it notified the limited liability company of the violation, and that the limited liability company did not correct it, or demonstrate that it did not occur, within sixty (60) days after perfection of service of the notice.

[Effective from and after January 1, 2013, this section will read:]

The Attorney General may commence a proceeding under Section 79-29-803 to dissolve a professional limited liability company if:

(a) The Secretary of State or a licensing authority with jurisdiction over a professional service described in the limited liability company's certificate of formation serves written notice on the limited liability company under Section 79-35-13 that it has violated or is violating a provision of this article;

(b) The limited liability company does not correct each alleged violation, or demonstrate to the reasonable satisfaction of the Secretary of State or licensing authority that it did not occur, within sixty (60) days after service of the notice is perfected under Section 79-35-13; and

(c) The Secretary of State or licensing authority certifies to the Attorney General a description of the violation, that it notified the limited liability company of the violation, and that the limited liability company did not correct it, or demonstrate that it did not occur, within sixty (60) days after perfection of service of the notice.

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 118, eff from and after Jan. 1, 2013.

Editor's Note — A former § 79-29-923 [Laws, 1995, ch. 494, § 57, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to judicial dissolution. See Editor's Note under Chapter 29 heading.

Amendment Notes — The 2012 amendment substituted "79-35-13" for "79-29-125" near the end of (a) and (b).

§ 79-29-924. Authority to transact business.

(1) A foreign professional limited liability company may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(2) A foreign professional limited liability company may not obtain a certificate of authority unless:

(a) Its name satisfies the requirements of Section 79-29-908;

(b) It is formed for one or more of the purposes described in Section 79-29-904; and

(c) All of its members would be qualified persons if the foreign professional limited liability company were a domestic professional limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-924 [Laws, 1995, ch. 494, § 58, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to authority to transact business. See Editor's Note under Chapter 29 heading.

§ 79-29-925. Application for certificate of authority.

The application of a foreign professional limited liability company for a certificate of authority to render professional services in this state must contain the information called for by Section 79-29-1003 and in addition include a statement that all of its members meet the requirements of Section 79-29-924.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-925 [Laws, 1995, ch. 494, § 59, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to application for certificate of authority to render professional services in Mississippi by foreign professional limited liability company. See Editor's Note under Chapter 29 heading.

§ 79-29-926. Revocation of certificate of authority.

The Secretary of State may administratively revoke the certificate of authority of a foreign professional limited liability company authorized to transact business in this state if a licensing authority with jurisdiction over a professional service described in the limited liability company's certificate of formation certifies to the Secretary of State that the limited liability company has violated or is violating a provision of this article and describes the violation. Such administrative revocation may be challenged by the foreign professional limited liability company in the chancery court of the county where the foreign professional limited liability company maintains its principal place of business in this state.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-926 [Laws, 1995, ch. 494, § 60, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to revocation of certificate of authority. See Editor's Note under Chapter 29 heading.

§ 79-29-930. Rulemaking by licensing authority.

Each licensing authority is empowered to promulgate rules expressly authorized by this article if the rules are consistent with the public interest or required by the public health or welfare or by generally recognized standards of professional conduct.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-930 [Laws, 1995, ch. 494, § 61, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to rulemaking by licensing authorities. See Editor's Note under Chapter 29 heading.

§ 79-29-931. Licensing authority's regulatory jurisdiction.

This article does not restrict the jurisdiction of a licensing authority over individuals rendering a professional service within the jurisdiction of the licensing authority, nor does it affect the interpretation or application of any law pertaining to standards of professional conduct.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-931 [Laws, 1995, ch. 494, § 62, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to licensing authority's regulatory jurisdiction. See Editor's Note under Chapter 29 heading.

§ 79-29-933. Application to existing professional limited liability companies.

(1) This article does not apply to a limited liability company now existing or later formed under a law of this state that is not a professional limited liability company unless the limited liability company elects professional limited liability company status under Section 79-29-903.

(2) This article does not affect an existing or future right or privilege to render professional services through the use of any other form of business entity.

(3) Unless otherwise specifically provided by an amendment to the certificate of formation, for professional limited liability companies in existence on July 1, 1995, Sections 79-29-912, 79-29-913 and 79-29-914 shall be applied by substituting the term "book value" for the term "fair value" in such sections only. Book value shall be determined from the books and records of the

professional limited liability company in accordance with the regular method of accounting used by the professional limited liability company and shall be determined as of the end of the month immediately preceding the death or disqualification of the member.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-933 [Laws, 1995, ch. 494, § 63, eff from and after July 1, 1995; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the applicability of former Article 9 to professional limited liability companies in existence of July 1, 1995. See Editor's Note under Chapter 29 heading.

ARTICLE 10.

FOREIGN LIMITED LIABILITY COMPANIES.

SEC.

- 79-29-1001. Law governing.
- 79-29-1002. Repealed.
- 79-29-1003. Registrations; application to register foreign limited liability companies.
- 79-29-1004. Repealed.
- 79-29-1005. Issuance of registration.
- 79-29-1006. Repealed.
- 79-29-1007. Name.
- 79-29-1008. Repealed.
- 79-29-1009. Changes and amendments.
- 79-29-1010. Repealed.
- 79-29-1011. Cancellation of registration.
- 79-29-1013. Transaction of business without registration.
- 79-29-1015. Transactions not constituting transacting business.
- 79-29-1017. Action by Attorney General.
- 79-29-1019. Execution; liability.
- 79-29-1021. Administrative revocation of registration of foreign limited liability company.
- 79-29-1023. Administrative revocation of registration, procedure and effect.
- 79-29-1025. Administrative revocation of registration, appeal and reinstatement.
- 79-29-1027. Administrative revocation of registration, denial of reinstatement; further review.
- 79-29-1029. Certificate of authorization.

§ 79-29-1001. Law governing.

(1) Subject to the Constitution of this state, the laws of the state or country or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members, and a foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

(2) A foreign limited liability company shall be subject to Section 79-29-117 of this chapter.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-1001 [Laws, 1994, ch. 402, § 67, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the laws governing the organization and internal affairs of a foreign limited liability company. See Editor's Note under Chapter 29 heading.

§ 79-29-1002. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-1002. [Laws, 1994, ch. 402, § 68; Laws, 1995, ch. 362, § 12; Laws, 1997, ch. 418, § 38, eff from and after July 1, 1997.]

Editor's Note — Former § 79-29-1002 was entitled: Registration; application to registered foreign limited liability companies. For present similar provisions, see § 79-29-1003.

§ 79-29-1003. Registrations; application to register foreign limited liability companies.

[Effective until January 1, 2013, this section will read:]

(1) Before transacting business in this state, a foreign limited liability company, including a foreign limited liability company formed to render professional services, shall register with the Secretary of State. In order to register, a foreign limited liability company shall deliver the application for registration of foreign limited liability company to the Office of the Secretary of State for filing, signed by a person with authority to do so under the laws of the state, country or other jurisdiction of its formation who is either a member, manager or officer of the foreign limited liability company and setting forth:

(a) The name of the foreign limited liability company which must meet the requirements of Section 79-29-1007 and, if different, the name under which it proposes to transact business in this state which must meet the requirements of Section 79-29-1007;

(b) The state or other jurisdiction and date of its formation and a statement that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;

(c) The name and street and mailing address of the registered agent for service of process on the foreign limited liability company which the foreign limited liability company has elected to appoint and who meets the requirements of Section 79-29-113(1)(b);

(d) A statement that the Secretary of State is appointed the registered agent of the foreign limited liability company for service of process if the registered agent's authority has been revoked or if the registered agent cannot be found or served with the exercise of reasonable diligence;

(e) The date on which the foreign limited liability company first did, or intends to do, business in the State of Mississippi.

(f) The address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or other

jurisdiction or, if not so required, the address of the principal office of the foreign limited liability company;

(g) If the foreign limited liability company is to have a specific date of dissolution, the latest date upon which the foreign limited liability company is to dissolve; and

(h) Any other matters the manager or members determine to include therein.

The person signing the application shall state the person's name, the capacity in which the person signs and the street and mailing address of the person beneath or opposite the person's signature. A document required or permitted to be delivered to the Office of the Secretary of State for filing under this chapter which contains a copy of a signature, however made, is acceptable for filing by the Secretary of State.

(2) The foreign limited liability company shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the Secretary of State or other public official having custody of corporate records in the state or country under whose law it is formed.

[Effective from and after January 1, 2013, this section will read:]

(1) Before transacting business in this state, a foreign limited liability company, including a foreign limited liability company formed to render professional services, shall register with the Secretary of State. In order to register, a foreign limited liability company shall deliver the application for registration of the foreign limited liability company to the Office of the Secretary of State for filing, signed by a person with authority to do so under the laws of the state, country or other jurisdiction of its formation who is either a member, manager or officer of the foreign limited liability company and setting forth:

(a) The name of the foreign limited liability company which must meet the requirements of Section 79-29-1007 and, if different, the name under which it proposes to transact business in this state which must meet the requirements of Section 79-29-1007;

(b) The state or other jurisdiction and date of its formation and a statement that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;

(c) The information required by Section 79-35-13;

(d) [Reserved]

(e) The date on which the foreign limited liability company first did, or intends to do, business in the State of Mississippi;

(f) The address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or other jurisdiction or, if not so required, the address of the principal office of the foreign limited liability company;

(g) If the foreign limited liability company is to have a specific date of dissolution, the latest date upon which the foreign limited liability company is to dissolve; and

(h) Any other matters the manager or members determine to include therein.

The person signing the application shall state the person's name, the capacity in which the person signs and the street and mailing address of the person beneath or opposite the person's signature. A document required or permitted to be delivered to the Office of the Secretary of State for filing under this chapter which contains a copy of a signature, however made, is acceptable for filing by the Secretary of State.

(2) The foreign limited liability company shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the Secretary of State or other public official having custody of corporate records in the state or country under whose law it is formed.

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 119, eff from and after Jan. 1, 2013.

Editor's Note — A former § 79-29-1003 [Laws, 1994, ch. 402, § 69; Laws, 1995, ch. 362, § 13; Laws, 1997, ch. 418, § 39, eff from and after July 1, 1997; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to issuance of registration. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-1005.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, typographical errors in this section were corrected as follows: in the section heading, the word "liability" was inserted; and in (1)(g), the word "foreign" was inserted preceding the first reference to "limited liability company."

Amendment Notes — The 2012 amendment rewrote (c) and (d) and made minor stylistic changes.

§ 79-29-1004. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-1004. [Laws, 1994, ch. 402, § 70, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-1004 was entitled: Name. For present similar provisions, see § 79-29-1007.

§ 79-29-1005. Issuance of registration.

If the Secretary of State finds that an application for registration meets the requirements of Sections 79-29-1003 and 79-29-1007 and all requisite fees as provided in Section 79-29-1203 have been paid, the Secretary of State shall:

(a) Certify that the application has been filed in the Secretary of State's office by endorsing upon the signed application the word "Filed" and the date and time of the filing. This endorsement is conclusive evidence of the date and time of its filing in the absence of actual fraud;

(b) File the application; and

(c) Return a copy to the person who delivered it for filing or that person's representative.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-1005 [Laws, 1994, ch. 402, § 71; Laws, 1997, ch. 418, § 40, eff from and after July 1, 1997; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to changes and amendments to statements in the registration. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-1009.

§ 79-29-1006. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-1006. [Laws, 1994, ch. 402, § 72; Laws, 1997, ch. 418, § 41, eff from and after July 1, 1997.]

Editor's Note — Former § 79-29-1006 was entitled: Cancellation of registration. For present similar provisions, see § 79-29-1011.

§ 79-29-1007. Name.

A foreign limited liability company shall register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state of organization, that includes the words "limited liability company" or the abbreviation "L.L.C." or "LLC" and that could be registered by a domestic limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-1007 [Laws, 1994, ch. 402, § 73, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to the transaction of business without registration. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-1013.

§ 79-29-1008. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-1008. [Laws, 1994, ch. 402, § 74, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-1008 was entitled: Transactions not constituting transacting business. For present similar provisions, see § 79-29-1015.

§ 79-29-1009. Changes and amendments.

If any statement, arrangements or other facts described in the application for registration of a foreign limited liability company have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly amend the application by delivering to the Office of the Secretary of State for filing a certificate of amendment that includes the amendment to the certificate correcting such statement, signed and acknowledged by a person authorized to do so under the laws of the state or other jurisdiction of its formation who is either a member, manager or officer of the

foreign limited liability company, together with a fee as set forth in Section 79-29-1203.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-1009 [Laws, 1994, ch. 402, § 75, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to action by the Attorney General. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-1017.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error near the end of the section was corrected by inserting the word "foreign" preceding "limited liability company, together with a fee."

§ 79-29-1010. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-1010. [Laws, 1994, ch. 402, § 76, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-1010 was entitled: Execution; liability. For present similar provisions, see § 79-29-1019.

§ 79-29-1011. Cancellation of registration.

(1) A foreign limited liability company registered under this chapter shall cancel its registration upon completion of the winding-up of its affairs.

(2) A foreign limited liability company may cancel its registration whenever it ceases transacting business in this state.

(3) Registration is canceled by delivering to the Office of the Secretary of State for filing a certificate of cancellation signed by a person authorized to do so under the laws of the state or other jurisdiction of its formation and paying the fee set forth in Section 79-29-1203.

(4) A cancellation revokes the authority of the registered agent for service of process designated pursuant to Section 79-29-1003 and operates as a consent that the Secretary of State may accept service of process on the foreign limited liability company with respect to causes of action arising out of the transaction of business in this state.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1013. Transaction of business without registration.

(1) A foreign limited liability company transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

(2) The failure of a foreign limited liability company to register in this state does not:

(a) Impair the validity of any contract or act of the foreign limited liability company;

(b) Impair the right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(c) Prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

(3) A member of a foreign limited liability company is not liable for the debts, obligations or liabilities of the foreign limited liability company solely by reason of the foreign limited liability company having transacted business in this state without registration.

(4) By transacting business in this state without registration, a foreign limited liability company appoints the Secretary of State as its registered agent for service of process with respect to causes of action arising out of the transaction of business in this state.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1015. Transactions not constituting transacting business.

(1) The following activities of a foreign limited liability company, among others, do not constitute transacting business in this state within the meaning of this article:

(a) Maintaining, defending, or settling any proceeding;

(b) Holding meetings of its members or managers or carrying on any other activities concerning its internal affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's own securities or interests or maintaining trustees or depositories with respect to those securities or interests;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts and holding, protecting and maintaining property so acquired;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature; or

(k) Transacting business in interstate commerce.

(2) A foreign limited liability company shall not be considered to be transacting business in this state solely because it:

(a) Is a shareholder in a corporation or a foreign corporation that transacts business in this state;

(b) Is a limited partner of a limited partnership or foreign limited partnership that is transacting business in this state; or

(c) Is a member or manager of a limited liability company or foreign limited liability company that is transacting business in this state.

(3) This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

(4) A foreign limited liability company which is a general partner of any general or limited partnership, which partnership is transacting business in this state, is hereby declared to be transacting business in this state.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1017. Action by Attorney General.

The Attorney General may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this article.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1019. Execution; liability.

Section 79-29-207(4) shall be applicable to foreign limited liability companies as if they were domestic limited liability companies.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1021. Administrative revocation of registration of foreign limited liability company.

(1) The Secretary of State may commence a proceeding under Section 79-29-1023 to administratively revoke the registration of a foreign limited liability company authorized to transact business in this state if:

(a) The foreign limited liability company does not pay within sixty (60) days after they are due any fees imposed by this chapter or other law;

(b) The foreign limited liability company does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(c) The foreign limited liability company is without a registered agent in this state for sixty (60) days or more;

(d) The foreign limited liability company does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or that its registered agent has resigned;

(e) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other public official having custody of corporate records in the state or country under whose law the foreign limited liability company is organized stating that it has been dissolved or ceased to exist as the result of a merger; or

(f) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign limited liability company to the Secretary of State pursuant to this chapter.

(2) The Secretary of State may not administratively revoke a registration of a foreign limited liability company unless the Secretary of State sends the foreign limited liability company notice of the administrative revocation under Section 79-29-1023, at least sixty (60) days before its effective date, by a record addressed to its registered agent, or to the foreign limited liability company if the foreign limited liability company fails to appoint and maintain a proper agent in this state. The notice must specify the cause for the administrative revocation of the registration. The authority of the foreign limited liability company to transact business in this state ceases on the effective date of the administrative revocation unless the foreign limited liability company cures the failure before that date.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1023. Administrative revocation of registration, procedure and effect.

[Effective until January 1, 2013, this section will read:]

(1) If the Secretary of State determines that one or more grounds exist under Section 79-29-1021 for administrative revocation of registration, the Secretary of State shall serve the foreign limited liability company with written notice of the determination under Section 79-29-125, except that such determination may be served by first class mail.

(2) If the foreign limited liability company does not correct each ground for administrative revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the service of the notice, the Secretary of State may administratively revoke the foreign limited liability company's registration by signing a certificate of administrative revocation that recites the ground or grounds for administrative revocation and its effective date. The Secretary of State shall file the original of the certificate of administrative revocation and serve the foreign limited liability company with a copy of the certificate of administrative revocation under Section 79-29-125, except that such certificate of administrative revocation may be served by first-class mail.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate of administrative revocation.

(4) The Secretary of State's administrative revocation of a foreign limited liability company's registration appoints the Secretary of State the foreign limited liability company's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited liability company was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign limited

liability company. Upon receipt of process and the payment of the fee specified in Section 79-29-1203, the Secretary of State shall mail a copy of the process to the foreign limited liability company at the office of its registered agent, or if the agent has resigned or cannot be located, at its principal office shown in its most recent communication received from the foreign limited liability company stating the current mailing address of its principal office, or, if none are on file, in its application for registration of foreign limited liability company.

(5) Administrative revocation of a foreign limited liability company's registration does not terminate the authority of the registered agent of the foreign limited liability company.

(6) The administrative revocation of the registration of a foreign limited liability company shall not impair the validity of any contract, deed, mortgage, security interest, lien or act of such foreign limited liability company or prevent the foreign limited liability company from defending any action, suit or proceeding with any court of this state.

(7) A member, manager or officer of a foreign limited liability company is not liable for the debts, obligations or liabilities of such foreign limited liability company solely by reason of the administrative revocation of the registration of a foreign limited liability company.

(8) A foreign limited liability company whose registration has been administratively revoked may not maintain any action, suit or proceeding in any court of this state until such foreign limited liability company's registration has been reinstated. An action, suit or proceeding may not be maintained in any court of this state by any successor or assignee of such foreign limited liability company on any right, claim or demand arising out of the transaction of business by a foreign limited liability company after the administrative revocation.

[Effective from and after January 1, 2013, this section will read:]

(1) If the Secretary of State determines that one or more grounds exist under Section 79-29-1021 for administrative revocation of registration, the Secretary of State shall serve the foreign limited liability company with written notice of the determination under Section 79-35-13, except that such determination may be served by first-class mail.

(2) If the foreign limited liability company does not correct each ground for administrative revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the service of the notice, the Secretary of State may administratively revoke the foreign limited liability company's registration by signing a certificate of administrative revocation that recites the ground or grounds for administrative revocation and its effective date. The Secretary of State shall file the original of the certificate of administrative revocation and serve the foreign limited liability company with a copy of the certificate of administrative revocation under Section 79-35-13, except that such certificate of administrative revocation may be served by first-class mail.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate of administrative revocation.

(4) The Secretary of State's administrative revocation of a foreign limited liability company's registration appoints the Secretary of State the foreign limited liability company's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited liability company was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign limited liability company. Upon receipt of process and the payment of the fee specified in Section 79-35-13, the Secretary of State shall mail a copy of the process to the foreign limited liability company at the office of its registered agent, or if the agent has resigned or cannot be located, at its principal office shown in its most recent communication received from the foreign limited liability company stating the current mailing address of its principal office, or, if none are on file, in its application for registration of foreign limited liability company.

(5) Administrative revocation of a foreign limited liability company's registration does not terminate the authority of the registered agent of the foreign limited liability company.

(6) The administrative revocation of the registration of a foreign limited liability company shall not impair the validity of any contract, deed, mortgage, security interest, lien or act of such foreign limited liability company or prevent the foreign limited liability company from defending any action, suit or proceeding with any court of this state.

(7) A member, manager or officer of a foreign limited liability company is not liable for the debts, obligations or liabilities of such foreign limited liability company solely by reason of the administrative revocation of the registration of a foreign limited liability company.

(8) A foreign limited liability company whose registration has been administratively revoked may not maintain any action, suit or proceeding in any court of this state until such foreign limited liability company's registration has been reinstated. An action, suit or proceeding may not be maintained in any court of this state by any successor or assignee of such foreign limited liability company on any right, claim or demand arising out of the transaction of business by a foreign limited liability company after the administrative revocation.

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 120, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (6) of this section by substituting "...shall not impair the validity of any contract..." for "...shall not impair the validity on any contract...". The Joint Committee ratified the correction at its July 22, 2010, meeting.

Amendment Notes — The 2012 amendment substituted "79-35-13" for "79-29-125" following "Section" in (1), (2), and (4).

§ 79-29-1025. Administrative revocation of registration, appeal and reinstatement.

[Effective until January 1, 2013, this section will read:]

(1) A foreign limited liability company whose registration is administratively revoked under Section 79-29-1021 may apply to the Secretary of State for reinstatement at any time after the effective date of such administrative revocation. The application must:

(a) Recite the name of the foreign limited liability company and the effective date of the administrative revocation;

(b) State that the ground or grounds for administrative revocation either did not exist or have been eliminated; and

(c) State that the foreign limited liability company's name satisfies the requirements of Section 79-29-1007.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, the Secretary of State shall reinstate the registration of a foreign limited liability company, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate of reinstatement, and serve the foreign limited liability company with a copy of the certificate of reinstatement under Section 79-29-125, except that such certificate may be served by first class mail.

(3) When the reinstatement is effective:

(a) The reinstatement relates back to and takes effect as of the effective date of the administrative revocation;

(b) Any liability incurred by the foreign limited liability company or a member after the administrative revocation and before the reinstatement shall be determined as if the administrative revocation had never occurred; and

(c) The foreign limited liability company may resume carrying on its business as if the administrative revocation had never occurred.

[Effective from and after January 1, 2013, this section will read:]

(1) A foreign limited liability company whose registration is administratively revoked under Section 79-29-1021 may apply to the Secretary of State for reinstatement at any time after the effective date of such administrative revocation. The application must:

(a) Recite the name of the foreign limited liability company and the effective date of the administrative revocation;

(b) State that the ground or grounds for administrative revocation either did not exist or have been eliminated; and

(c) State that the foreign limited liability company's name satisfies the requirements of Section 79-29-1007.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, the Secretary of State shall reinstate the registration of a foreign

limited liability company, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate of reinstatement, and serve the foreign limited liability company with a copy of the certificate of reinstatement under Section 79-35-13, except that such certificate may be served by first-class mail.

(3) When the reinstatement is effective:

(a) The reinstatement relates back to and takes effect as of the effective date of the administrative revocation;

(b) Any liability incurred by the foreign limited liability company or a member after the administrative revocation and before the reinstatement shall be determined as if the administrative revocation had never occurred; and

(c) The foreign limited liability company may resume carrying on its business as if the administrative revocation had never occurred.

SOURCES: Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 382, § 121, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment substituted “79-35-13” for “79-29-125” following “Section” near the end of (2).

§ 79-29-1027. Administrative revocation of registration, denial of reinstatement; further review.

(1) If the Secretary of State denies a foreign limited liability company’s application for reinstatement of the registration following administrative revocation, the Secretary of State shall serve the foreign limited liability company with a record that explains the reason or reasons for denial.

(2) The foreign limited liability company may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county where the foreign limited liability company is domiciled within thirty (30) days after service of the notice of denial is perfected. The foreign limited liability company appeals by petitioning the court to set aside the administrative revocation and attaching to the petition copies of the Secretary of State’s certificate of administrative revocation, the foreign limited liability company’s application for reinstatement and the Secretary of State’s notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the registration of the foreign limited liability company or may take other action the court considers appropriate.

(4) The court’s final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1029. Certificate of authorization.

(1) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the Office of the Secretary of State show that the foreign limited liability company has registered as a foreign limited liability company, the registration has not been administratively revoked, and a certificate of cancellation has not been filed which has become effective. A certificate of authorization must state:

(a) The foreign limited liability company's name and any alternate name adopted under Section 79-29-1003(1)(a) for use in this state;

(b) That the foreign limited liability company is authorized to transact business in this state;

(c) Whether all fees due under this chapter to the Secretary of State have been paid;

(d) Whether the foreign limited liability company's most recent annual report required by Section 79-29-215 has been filed with the Secretary of State;

(e) Whether a certificate of administrative revocation of registration has been filed;

(f) Whether a certificate of cancellation of registration as a foreign limited liability company has been filed for the limited liability company; and

(g) Other facts of record in the Office of the Secretary of State which are specified by the person requesting the certificate.

(2) Subject to any qualification stated in the certificate, a certificate of authorization issued by the Secretary of State is conclusive evidence that the foreign limited liability company is authorized to transact business in this state.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

ARTICLE 11.**DERIVATIVE ACTIONS.****SEC.**

- | | |
|-------------|---|
| 79-29-1101. | Right to bring action. |
| 79-29-1102. | Repealed. |
| 79-29-1103. | Proper plaintiff. |
| 79-29-1104. | Repealed. |
| 79-29-1105. | Complaint. |
| 79-29-1106. | Repealed. |
| 79-29-1107. | Stay of proceedings. |
| 79-29-1109. | Dismissal. |
| 79-29-1111. | Discontinuance or settlement. |
| 79-29-1113. | Payment of expenses. |
| 79-29-1115. | Applicability to foreign limited liability companies. |

§ 79-29-1101. Right to bring action.

A member or an owner of a financial interest may bring an action in chancery court in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

SOURCES: Laws, 1994, ch. 402, § 77; Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-1101 [Laws, 1994, ch. 402, § 77, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to members who may commence or maintain a derivative proceeding. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-1103.

§ 79-29-1102. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.
§ 79-29-1102. [Laws, 1994, ch. 402, § 78, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-1102 was entitled: Demand.

§ 79-29-1103. Proper plaintiff.

In a derivative action, the plaintiff must be a member or an owner of a financial interest at the time of bringing the action and:

- (a) At the time of the transaction of which the plaintiff complains; or
- (b) The plaintiff's status as a member or an owner of a financial interest had devolved upon the plaintiff by operation of law or pursuant to the terms of an operating agreement from a person who was a member or an owner of a financial interest at the time of the transaction.

A plaintiff may not commence or maintain a derivative proceeding unless the plaintiff fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company.

SOURCES: Laws, 1994, ch. 402, § 79; Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-1103 [Laws, 1994, ch. 402, § 79, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related stay of proceedings. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-1107.

§ 79-29-1104. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.
§ 79-29-1104. [Laws, 1994, ch. 402, § 80, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-1104 was entitled: Dismissal. For present similar provisions, see § 79-29-1109.

§ 79-29-1105. Complaint.

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member pursuant to Section 79-29-1101 or the reasons for not making the effort.

SOURCES: Laws, 1994, ch. 402, § 81; Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-1105 [Laws, 1994, ch. 402, § 81, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to discontinuance or settlement. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-1111.

§ 79-29-1106. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.
§ 79-29-1106. [Laws, 1994, ch. 402, § 82, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-1106 was entitled: Payment of expenses. For present similar provisions, see § 79-29-1113.

§ 79-29-1107. Stay of proceedings.

If the limited liability company commences an inquiry into the allegations made in the complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

SOURCES: Laws, 1994, ch. 402, § 83; Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — A former § 79-29-1107 [Laws, 1994, ch. 402, § 83, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to applicability to foreign limited liability companies. See Editor's Note under Chapter 29 heading. For present similar provisions, see § 79-29-1115.

§ 79-29-1109. Dismissal.

(1) A derivative proceeding shall be dismissed by the court on motion by the limited liability company if one of the groups specified in subsection (2) or (6) of this section has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the limited liability company.

(2) Unless a panel is appointed pursuant to subsection (6) of this section, the determination in subsection (1) of this section shall be made by one (1) of the following:

(a) A majority vote of independent managers present at a meeting of managers if independent managers constitute a majority of all managers;

(b) A majority vote of independent members at a meeting of the members, whether or not such independent members constituted a majority of all members; or

(c) A majority vote of a committee consisting of two (2) or more independent managers appointed by the majority vote of independent managers present at a meeting of managers, whether or not such independent managers constituted a majority of all managers.

(3) None of the following shall by itself cause a manager or member to be considered not independent for purposes of this section:

(a) The nomination or election of the manager by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) The naming of the manager or member as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(c) The approval by the manager or member of the act being challenged in the derivative proceeding if the act resulted in no personal benefit to the manager or member.

(4) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member, the complaint shall allege with particularity facts establishing either:

(a) That a majority of the persons making the determination under subsection (2) of this section were not independent at the time the determination was made; or

(b) That the requirements of subsection (1) of this section have not been met.

(5) If the determination in subsection (1) of this section is made by a committee pursuant to subsection (2)(c) of this section and a majority of managers are not independent at the time the determination is made, or if the determination in subsection (1) is made by the members pursuant to subsection (2)(b) of this section and a majority of the members are not independent at the time the determination is made, then the limited liability company shall have the burden of proving that the requirements of subsection (1) have been met. In all other cases, the plaintiff shall have the burden of proving that the requirements of subsection (1) of this section have not been met.

(6) The court may appoint a panel of one or more independent persons upon motion by the limited liability company to make a determination whether the maintenance of the derivative proceeding is in the best interests of the limited liability company. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (1) of this section have not been met.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1111. Discontinuance or settlement.

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the limited liability company's members or a class of members, the court shall direct that notice be given to the members affected.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1113. Payment of expenses.

(1) If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a limited liability company.

(2) On termination of the derivative proceeding the court may order the plaintiff to pay any defendant's reasonable expenses, including reasonable attorney's fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor's Note — Chapter 29 of Title 79 has been set out twice. This chapter is effective from and after January 1, 2011. For the chapter as effective until January 1, 2011, see the preceding chapter, also numbered Chapter 29.

§ 79-29-1115. Applicability to foreign limited liability companies.

In any derivative proceeding brought in the courts of this state in the right of a foreign limited liability company, the matters covered by this article shall be governed by this chapter.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

ARTICLE 12.**MISCELLANEOUS.****SEC.**

- | | |
|-------------|--|
| 79-29-1201. | Construction and application. |
| 79-29-1202. | Repealed. |
| 79-29-1203. | Fees [Repealed effective July 1, 2015]. |
| 79-29-1204. | Repealed. |
| 79-29-1205. | Severability. |
| 79-29-1207. | Powers of the Secretary of State. |
| 79-29-1209. | Relation to Electronic Signatures in Global and National Commerce Act. |
| 79-29-1211. | Enforceability of written agreements to choose forum, authorize arbitration and to choose prescribed manner of service of process. |

§ 79-29-1201. Construction and application.

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

(3) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to the singular. The captions contained herein are for the purposes of convenience only and shall not control or affect the construction of this chapter.

(4) As used herein, the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation,” whether or not such phrase is included therein.

SOURCES: Laws, 1994, ch. 402, § 84; Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

Editor’s Note — A former § 79-29-1201 [Laws, 1994, ch. 402, § 84, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to chapter construction and application. See Editor’s Note under Chapter 29 heading.

§ 79-29-1202. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-1202. [Laws, 1994, ch. 402, § 85, eff from and after July 1, 1994.]

Editor’s Note — Former § 79-29-1202 was entitled: Severability. For present similar provisions, see § 79-29-1205.

§ 79-29-1203. Fees [Repealed effective July 1, 2015].

[Effective until January 1, 2013, this section will read:]

(1) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Mississippi:

(a) Filing of Reservation of Limited Liability Company Name or Transfer of Reservation, Twenty-five Dollars (\$25.00).

(b) Filing of Change of Address of Registered Agent, Twenty-five Dollars (\$25.00).

(c) Filing of Resignation of Registered Agent, Five Dollars (\$5.00).

(d) Filing of Certificate of Formation, Fifty Dollars (\$50.00).

(e) Filing of Amendment to Certificate of Formation, Fifty Dollars (\$50.00).

(f) Filing of Certificate of Dissolution, Fifty Dollars (\$50.00).

(g) Filing of Application for Registration of Foreign Limited Liability Company, Two Hundred Fifty Dollars (\$250.00) and Ten Dollars (\$10.00) for

each day, but not to exceed a total of One Thousand Dollars (\$1,000.00) for each year the foreign limited liability company transacts business in this state without a registration as a foreign limited liability company.

(h) Filing of Certificate of Correction, Fifty Dollars (\$50.00).

(i) Filing of Certificate of Cancellation of Registration of Foreign Limited Liability Company, Fifty Dollars (\$50.00).

(j) Filing of an Annual Report of Domestic Limited Liability Company, (no fee).

(k) Filing of an Annual Report of Foreign Limited Liability Company, to be deposited in the Elections Support Fund created in Section 23-15-5, Two Hundred Fifty Dollars (\$250.00).

(l) Certificate of Administrative Dissolution, (no fee).

(m) Filing of Application for Reinstatement Following Administrative Dissolution, Fifty Dollars (\$50.00).

(n) Certificate of Administrative Revocation of Authority to Transact Business, (no fee).

(o) Filing of Application for Reinstatement Following Administrative Revocation, One Hundred Dollars (\$100.00).

(p) Certificate of Reinstatement Following Administrative Dissolution, (no fee).

(q) Certificate of Reinstatement Following Administrative Revocation of Authority to Transact Business, (no fee).

(r) Filing of Certificate of Revocation of Dissolution, Twenty-five Dollars (\$25.00).

(s) Application for Certificate of Existence or Authorization, Twenty-five Dollars (\$25.00).

(t) Any other document required or permitted to be filed under this chapter, Twenty-five Dollars (\$25.00).

(2) The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) each time process is served on the Secretary of State under Section 79-29-101 et seq.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign limited liability company:

(a) One Dollar (\$1.00) a page for copying; and

(b) Ten Dollars (\$10.00) for the certificate.

(4) The Secretary of State may promulgate rules to:

(a) Reduce the filing fees set forth in this section or provide for discounts of fees as set forth in this section to encourage online filing of documents or for other reasons as determined by the Secretary; and

(b) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary may promulgate rules to provide for an additional reasonable filing fee to be paid by the applicant and collected by the Secretary for the expedited filing services.

(5) This section shall stand repealed on July 1, 2012.

[Effective from and after January 1, 2013, this section will read:]

(1) No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Mississippi:

(a) Filing of Reservation of Limited Liability Company Name or Transfer of Reservation, Twenty-five Dollars (\$25.00).

(b) [Reserved]

(c) [Reserved]

(d) Filing of Certificate of Formation, Fifty Dollars (\$50.00).

(e) Filing of Amendment to Certificate of Formation, Fifty Dollars (\$50.00).

(f) Filing of Certificate of Dissolution, Fifty Dollars (\$50.00).

(g) Filing of Application for Registration of Foreign Limited Liability Company, Two Hundred Fifty Dollars (\$250.00) and Ten Dollars (\$10.00) for each day, but not to exceed a total of One Thousand Dollars (\$1,000.00) for each year the foreign limited liability company transacts business in this state without a registration as a foreign limited liability company.

(h) Filing of Certificate of Correction, Fifty Dollars (\$50.00).

(i) Filing of Certificate of Cancellation of Registration of Foreign Limited Liability Company, Fifty Dollars (\$50.00).

(j) Filing of an Annual Report of Domestic Limited Liability Company, (no fee).

(k) Filing of an Annual Report of Foreign Limited Liability Company, to be deposited in the Elections Support Fund created in Section 23-15-5, Two Hundred Fifty Dollars (\$250.00).

(l) Certificate of Administrative Dissolution, (no fee).

(m) Filing of Application for Reinstatement Following Administrative Dissolution, Fifty Dollars (\$50.00).

(n) Certificate of Administrative Revocation of Authority to Transact Business, (no fee).

(o) Filing of Application for Reinstatement Following Administrative Revocation, One Hundred Dollars (\$100.00).

(p) Certificate of Reinstatement Following Administrative Dissolution, (no fee).

(q) Certificate of Reinstatement Following Administrative Revocation of Authority to Transact Business, (no fee).

(r) Filing of Certificate of Revocation of Dissolution, Twenty-five Dollars (\$25.00).

(s) Application for Certificate of Existence or Authorization, Twenty-five Dollars (\$25.00).

(t) Any other document required or permitted to be filed under this chapter, Twenty-five Dollars (\$25.00).

(2) The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) each time process is served on the Secretary of State under Section 79-29-101 et seq.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign limited liability company:

(a) One Dollar (\$1.00) a page for copying; and

(b) Ten Dollars (\$10.00) for the certificate.

(4) The Secretary of State may promulgate rules to:

(a) Reduce the filing fees set forth in this section or provide for discounts of fees as set forth in this section to encourage online filing of documents or for other reasons as determined by the Secretary of State; and

(b) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary of State may promulgate rules to provide for an additional reasonable filing fee to be paid by the applicant and collected by the Secretary of State for the expedited filing services.

(5) This section shall stand repealed on July 1, 2015.

SOURCES: Laws, 1994, ch. 402, § 86; Laws, 2010, ch. 532, § 1; Laws, 2012, ch. 368, § 1; Laws, 2012, ch. 382, § 122, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Section 122 of ch. 382, Laws of 2012, effective from and after January 1, 2013, amended this section. Section 1 of ch. 368, Laws of 2012, effective July 1, 2012, also amended this section. As set out above, this section reflects the language of Section 122 of ch. 382, Laws of 2012, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Editor's Note — A former § 79-29-1203 [Laws, 1994, ch. 402, § 86, eff from and after July 1, 1994; Repealed by Laws, 2010, ch. 532, § 3, eff from and after January 1, 2011] related to fees. See Editor's Note under Chapter 29 heading.

Amendment Notes — The first 2012 amendment (ch. 368), substituted "Secretary of State" for "Secretary" in (4)(a) and (b); and extended the repealer provision from "July 1, 2012" to "July 1, 2015" in (5).

The second 2012 amendment (ch. 382), rewrote (1)(b) and (c); added "of State" following "Secretary" throughout (4)(a) and (b); and extended the repealer provision from "July 1, 2012" to "July 1, 2015" in (5).

§ 79-29-1204. Repealed.

Repealed by Laws, 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

§ 79-29-1204. [Laws, 1994, ch. 402, § 87, eff from and after July 1, 1994.]

Editor's Note — Former § 79-29-1204 was entitled: Powers of Secretary of State. For present similar provisions, see § 79-29-1207.

§ 79-29-1205. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this chapter which can be

given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1207. Powers of the Secretary of State.

The Secretary of State shall have the powers reasonably necessary to perform the duties required of the Office of the Secretary of State under the provisions of this chapter.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1209. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USCS Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 USCS Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USCS Section 7003(b).

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1211. Enforceability of written agreements to choose forum, authorize arbitration and to choose prescribed manner of service of process.

In a written operating agreement or other writing, a manager, member or officer may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of this state, or the exclusivity of arbitration in a specified jurisdiction or in this state, and to be served with legal process in the manner prescribed in such operating agreement or other writing. Except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or in this state, a member who is not a manager may not waive its right to maintain a legal action or proceeding in the courts of this state with respect to matters relating to the organization or internal affairs of a limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

ARTICLE 13.

TRANSITION PROVISIONS.

SEC.

79-29-1301. Applicability upon effective date.

79-29-1303. Early effectiveness of fees and annual reports.

79-29-1305. Early adoption of this chapter by existing limited liability company.

- 79-29-1307. Early adoption of chapter by registered foreign limited liability company.
- 79-29-1309. Applicability to existing limited liability companies.
- 79-29-1311. Applicability to certain acts, contracts, and transactions.
- 79-29-1313. Indemnification.
- 79-29-1315. Dissolution.
- 79-29-1317. Maintenance of prior action.

§ 79-29-1301. Applicability upon effective date.

On or after January 1, 2011, this chapter applies to:

- (a) A domestic limited liability company formed on or after January 1, 2011; and
- (b) A foreign limited liability company entity that is not registered with the Secretary of State to transact business in this state before January 1, 2011.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1303. Early effectiveness of fees and annual reports.

(1) On or after January 1, 2011, the fees required by Section 79-29-1203 apply to all filings made with the Secretary of State, including comparable filings under prior law, regardless of whether a limited liability company is subject to or has adopted this chapter. The intent of this section is to require a filing fee for all documents filed under either this chapter or the prior law without regard to the difference in designation of the document.

(2) On or after January 1, 2011, Sections 79-29-215, 79-29-219, 79-29-821, 79-29-823, 79-29-825, 79-29-827 and 79-29-831, shall apply to all domestic limited liability companies formed before or after January 1, 2011, and Sections 79-29-215, 79-29-1021, 79-29-1023, 79-29-1025, 79-29-1027 and 79-29-1029 shall apply to all foreign limited liability companies registered with the Secretary of State before or after January 1, 2011.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1305. Early adoption of this chapter by existing limited liability company.

A domestic limited liability company formed before January 1, 2011, may voluntarily elect to adopt and become subject to this chapter by:

- (a) Adopting the chapter by complying with the procedures for approval, under prior law and its organizational documents, of an amendment to its certificate of formation;
- (b) Amending any noncomplying organizational documents to comply with this chapter if any of its organizational documents, including its certificate of formation, do not comply with this chapter by complying with the procedures, under prior law and its organizational documents, to amend the noncomplying organizational documents to comply with this chapter,

including filing with the Secretary of State in accordance with Section 79-29-203 a certificate of amendment to cause its certificate of formation to comply with this chapter; and

(c) Filing with the Secretary of State in accordance with Section 79-29-203 a statement that the domestic limited liability company is electing to adopt this chapter.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1307. Early adoption of chapter by registered foreign limited liability company.

A foreign limited liability company registered with the Secretary of State to transact business in this state before January 1, 2011, may voluntarily elect to adopt and become subject to this chapter by filing with the Secretary of State in accordance with Section 79-29-203:

(a) A statement that the foreign limited liability company is electing to adopt this chapter; and

(b) An amendment to its registration of foreign limited liability company that would cause its certificate of registration of foreign limited liability company to comply with this chapter.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1309. Applicability to existing limited liability companies.

On or after January 1, 2012, such date referred to in this article as the “mandatory application date,” if a domestic limited liability company formed before January 1, 2011, or a foreign limited liability company registered with the Secretary of State to transact business in this state before January 1, 2011, has not taken the actions specified by Section 79-29-1305 or 79-29-1307 to elect to adopt this chapter:

(a) This chapter applies to the domestic or foreign limited liability company and all actions taken by the managers, officers, or members of the limited liability company, except as otherwise expressly provided by this article;

(b) A domestic or foreign limited liability company shall not be considered to have failed to comply with this chapter if the entity’s certificate of formation or application for registration of foreign limited liability company, as appropriate, does not comply with the chapter;

(c) A domestic limited liability company shall conform its certificate of formation to the requirements of this chapter when it next files an amendment to its certificate of formation; and

(d) A foreign limited liability company shall conform its registration of foreign limited liability company to the requirements of this chapter when it next files an amendment to its registration of foreign limited liability company.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1311. Applicability to certain acts, contracts, and transactions.

All of the provisions of this chapter govern the acts, contracts, or other transactions by a limited liability company subject to Section 79-29-1301 or by its managers, members or officers that occur on or after January 1, 2011. Unless the limited liability company that is formed or registered before January 1, 2011, has elected to be subject to the Revised Act prior to the mandatory application date the prior law governs the acts, contracts, or transactions of the limited liability company that is formed or registered before January 1, 2011, or its managers, members or officers that occur before the mandatory application date.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1313. Indemnification.

Section 79-29-123 governs any proposed indemnification by a limited liability company after the mandatory application date, regardless of whether the events on which the indemnification is based occurred before or after the mandatory application date. In a case in which indemnification is permitted but not required under Section 79-29-123, a provision relating to indemnification contained in the organizational documents of a limited liability company on the mandatory application date that would otherwise have the effect of limiting the nature or type of indemnification permitted by Section 79-29-123 may not be construed after the mandatory application date as limiting the indemnification authorized by Section 79-29-123 unless the provision so intended to limit or restrict permissive indemnification under applicable law.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1315. Dissolution.

(1)(a) Section 79-29-803 applies to an action for judicial dissolution commenced after the mandatory application date; or

(b) Section 79-29-801 applies to a voluntary dissolution initiated after the mandatory application date.

(2) The prior law governs:

(a) An action described by subsection (1)(a) of this section that is pending on the mandatory application date; or

(b) A proceeding described by subsection (1)(b) of this section initiated before the mandatory application date.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

§ 79-29-1317. Maintenance of prior action.

Except as expressly provided by this article, this chapter does not apply to an action or proceeding commenced before the mandatory application date. Prior law applies to the action or proceeding.

SOURCES: Laws, 2010, ch. 532, § 1, eff from and after Jan. 1, 2011.

CHAPTER 35**The Mississippi Registered Agents Act [Effective January 1, 2013]****SEC.**

- 79-35-1. Short title [Effective January 1, 2013].
- 79-35-2. Definitions [Effective January 1, 2013].
- 79-35-3. Fees [Effective January 1, 2013].
- 79-35-4. Addresses in filings [Effective January 1, 2013].
- 79-35-5. Appointment of registered agent [Effective January 1, 2013].
- 79-35-6. Listing of commercial registered agent [Effective January 1, 2013].
- 79-35-7. Termination of listing of commercial registered agent [Effective January 1, 2013].
- 79-35-8. Change of registered agent by entity [Effective January 1, 2013].
- 79-35-9. Change of name or address by noncommercial registered agent [Effective January 1, 2013].
- 79-35-10. Change of name, address, or type of organization by commercial registered agent [Effective January 1, 2013].
- 79-35-11. Resignation of registered agent [Effective January 1, 2013].
- 79-35-12. Appointment of agent by nonfiling or nonqualified foreign entity [Effective January 1, 2013].
- 79-35-13. Service of process on entities [Effective January 1, 2013].
- 79-35-14. Duties of registered agent [Effective January 1, 2013].
- 79-35-15. Jurisdiction and venue [Effective January 1, 2013].
- 79-35-16. Consistency of application [Effective January 1, 2013].
- 79-35-17. Relation to Electronic Signatures in Global and National Commerce Act [Effective January 1, 2013].
- 79-35-18. Savings clause [Effective January 1, 2013].
- 79-35-19. Designation of registered agent without consent; penalties and liabilities [Effective January 1, 2013].

Comparable Laws from other States — Arkansas: A.C.A. § 4-20-101 et seq.

Hawaii: HRS § 425R-1 et seq.

Idaho: Idaho Code § 30-401 et seq.

Maine: 5 M.R.S. § 101 et seq.

Montana: Mont. Code Anno., § 35-7-101 et seq.

Nevada: Nev. Rev. Stat. Ann. § 77.010 et seq.

North Dakota: N.D. Cent. Code, § 10-01.1-01 et seq.

South Dakota: S.D. Codified Laws § 59-11-1 et seq.

Utah: Utah Code Ann. § 16-17-101 et seq.

§ 79-35-1. Short title [Effective January 1, 2013].

This chapter shall be known and may be cited as the Mississippi Registered Agents Act.

SOURCES: Laws, 2012, ch. 382, § 1, eff from and after Jan. 1, 2013.

§ 79-35-2. Definitions [Effective January 1, 2013].

As used in this chapter unless the context otherwise requires:

(1) "Appointment of agent" means a statement appointing an agent for service of process filed by a domestic entity that is not a filing entity or a nonqualified foreign entity under Section 79-35-12.

(2) "Commercial registered agent" means an individual or a domestic or foreign entity listed under Section 79-35-6.

(3) "Domestic entity" means an entity whose internal affairs are governed by the law of this state.

(4) "Entity" means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

(A) An individual;

(B) A testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;

(C) An association or relationship that is not a partnership by reason of Section 79-13-202(c) or a similar provision of the law of any other jurisdiction;

(D) A decedent's estate; or

(E) A public corporation, government or governmental subdivision, agency, or instrumentality, or quasi-governmental instrumentality.

(5) "Filing entity" means an entity that is created by the filing of a public organic document.

(6) "Foreign entity" means an entity other than a domestic entity.

(7) "Foreign qualification document" means an application for a certificate of authority or other foreign qualification filing with the Secretary of State by a foreign entity.

(8) "Governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

(A) Receive or demand access to information concerning, or the books and records of, the entity;

(B) Vote for the election of the governors of the entity; or

(C) Receive notice of or vote on any or all issues involving the internal affairs of the entity.

(9) "Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(10) "Interest" means:

- (A) A governance interest in an unincorporated entity;
- (B) A transferable interest in an unincorporated entity; or
- (C) A share or membership in a corporation.

(11) "Interest holder" means a direct holder of an interest.

(12) "Jurisdiction of organization," with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.

(13) "Noncommercial registered agent" means a person that is not listed as a commercial registered agent under Section 79-35-6 and that is an individual or a domestic or foreign entity that serves in this state as the agent for service of process of an entity.

(14) "Nonqualified foreign entity" means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the Secretary of State.

(15) "Nonresident LLP statement" means:

- (A) A statement of qualification of a domestic limited liability partnership that does not have an office in this state; or
- (B) A statement of foreign qualification of a foreign limited liability partnership that does not have an office in this state.

(16) "Organic law" means the statutes, if any, other than this chapter, governing the internal affairs of an entity.

(17) "Organic rules" means the public organic document and private organic rules of an entity.

(18) "Person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(19) "Private organic rules" mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(20) "Public organic document" means the public record the filing of which creates an entity, and any amendment to or restatement of that record.

(21) "Qualified foreign entity" means a foreign entity that is authorized to transact business in this state pursuant to a filing with the Secretary of State.

(22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) "Registered agent" means a commercial registered agent or a noncommercial registered agent.

(24) "Registered agent filing" means:

- (A) The public organic document of a domestic filing entity;
- (B) A nonresident LLP statement;
- (C) A foreign qualification document; or
- (D) An appointment of agent.

(25) "Represented entity" means:

- (A) A domestic filing entity;
- (B) A domestic or qualified foreign limited liability partnership that does not have an office in this state;
- (C) A qualified foreign entity;
- (D) A domestic entity that is not a filing entity for which an appointment of agent has been filed; or
- (E) A nonqualified foreign entity for which an appointment of agent has been filed.

(26) "Sign" means, with present intent to authenticate or adopt a record:

- (A) To execute or adopt a tangible symbol; or
- (B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(27) "Transferable interest" means the right under an entity's organic law to receive distributions from the entity.

(28) "Type," with respect to an entity, means a generic form of entity:

- (A) Recognized at common law; or
- (B) Organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

SOURCES: Laws, 2012, ch. 382, § 2, eff from and after Jan. 1, 2013.

§ 79-35-3. Fees [Effective January 1, 2013].

(a) The Secretary of State shall collect the following fees when a filing is made under this chapter:

| Document | Fee |
|---|------------|
| (1) Commercial registered agent listing statement | \$ 100.00 |
| (2) Commercial registered agent termination statement | \$ 50.00 |
| (3) Statement of change | \$ 10.00 |
| | per entity |
| not to exceed | \$1,000.00 |
| (4)(A) Statement of resignation | No fee |
| (B) Statement of nonacceptance | No fee |
| (5) Statement appointing an agent for service of process pursuant to Section 79-35-12 | \$ 10.00 |

(b) The Secretary of State shall collect the following fees for copying and certifying a copy of any document filed under this chapter:

- (1) \$1.00 a page for copying; and
- (2) \$10.00 for a certificate.

(c) The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) each time process is served on the Secretary of State under this chapter. The

party to a proceeding causing service of process is entitled to recover the fee as costs if he prevails in the proceeding.

(d) The Secretary of State may collect a filing fee greater than the fee as prescribed by rule, not to exceed Twenty-five Dollars (\$25.00), if the form for such filings prescribed by the Secretary of State has not been used.

(e) The Secretary of State may promulgate rules to reduce the filing fees set forth in this section or provide for discounts of fees as set forth in this section to encourage online filing of documents or for other reasons as determined by the secretary.

SOURCES: Laws, 2012, ch. 382, § 3, eff from and after Jan. 1, 2013.

§ 79-35-4. Addresses in filings [Effective January 1, 2013].

Whenever a provision of this chapter requires that a filing state an address, the filing must state:

- (1) An actual street address in this state; and
- (2) A mailing address in this state, if different from the address under paragraph (1) of this section.

SOURCES: Laws, 2012, ch. 382, § 4, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section. In the introductory paragraph, “other than Section 79-35-11(a)(4)” was deleted preceding “Whenever a provision of this chapter.” The Joint Committee ratified the correction at its August 16, 2012, meeting.

§ 79-35-5. Appointment of registered agent [Effective January 1, 2013].

(a) A registered agent filing must state:

- (1) The name of the represented entity’s commercial registered agent;

or

- (2) If the entity does not have a commercial registered agent, the name and address of the entity’s noncommercial registered agent.

(b) The appointment of a registered agent pursuant to subsection (a)(1) or (a)(2) of this section is an affirmation by the represented entity that:

- (1) The entity has:

- (A) Notified the agent of the appointment; and

- (B) Provided the agent with a forwarding address as provided in Section 79-35-14; and

- (2) The agent has consented to serve as such.

(c) The Secretary of State shall make available in a record as soon as practicable a daily list of filings that contain the name of a registered agent. The list must:

- (1) Be available for at least fourteen (14) calendar days;
- (2) List in alphabetical order the names of the registered agents; and

(3) State the type of filing and name of the represented entity making the filing.

SOURCES: Laws, 2012, ch. 382, § 5, eff from and after Jan. 1, 2013.

§ 79-35-6. Listing of commercial registered agent [Effective January 1, 2013].

(a) An individual or a domestic or foreign entity may become listed as a commercial registered agent by filing with the Secretary of State a commercial registered agent listing statement signed by or on behalf of the person which states:

(1) The name of the individual or the name, type, and jurisdiction of organization of the entity; and

(2) The address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.

(b) A commercial registered agent listing statement may include the information regarding acceptance of service of process in a record by the commercial registered agent provided for in Section 79-35-13(d).

(c) If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the Secretary of State from the name of another commercial registered agent listed under this section, the person must adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.

(d) A commercial registered agent listing statement takes effect on filing.

(e) The commercial registered agent listing statement must be accompanied by a list in alphabetical order of the entities represented by the person. The Secretary of State shall note the filing of the commercial registered agent listing statement in the index of filings maintained by the Secretary of State for each listed entity. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

SOURCES: Laws, 2012, ch. 382, § 6, eff from and after Jan. 1, 2013.

§ 79-35-7. Termination of listing of commercial registered agent [Effective January 1, 2013].

(a) A commercial registered agent may terminate its listing as a commercial registered agent by filing with the Secretary of State a commercial registered agent termination statement signed by or on behalf of the agent which states:

(1) The name of the agent as currently listed under Section 79-35-6; and

(2) That the agent is no longer in the business of serving as a commercial registered agent in this state.

(b) A commercial registered agent termination statement takes effect on the thirty-first day after the day on which it is filed.

(c) The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.

(d) When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in Section 79-35-13.

(e) Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

SOURCES: Laws, 2012, ch. 382, § 7, eff from and after Jan. 1, 2013.

§ 79-35-8. Change of registered agent by entity [Effective January 1, 2013].

(a) A represented entity may change the information currently on file under Section 79-35-5(a) by filing with the Secretary of State a statement of change signed on behalf of the entity which states:

(1) The name of the entity; and

(2) The information that is to be in effect as a result of the filing of the statement of change.

(b) The interest holders or governors of a domestic entity need not approve the filing of:

(1) A statement of change under this section; or

(2) A similar filing changing the registered agent or registered office of the entity in any other jurisdiction.

(c) The appointment of a registered agent pursuant to subsection (a) of this section is an affirmation by the represented entity that the entity has notified the agent of the appointment and that the agent has consented to serve as such.

(d) A statement of change filed under this section takes effect on filing.

SOURCES: Laws, 2012, ch. 382, § 8, eff from and after Jan. 1, 2013.

§ 79-35-9. Change of name or address by noncommercial registered agent [Effective January 1, 2013].

(a) If a noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant to Section 79-35-5(a), the agent shall file with the Secretary of State, with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent which states:

(1) The name of the entity;

(2) The name and address of the agent as currently in effect with respect to the entity;

(3) If the name of the agent has changed, its new name; and

(4) If the address of the agent has changed, the new address.

(b) A statement of change filed under this section takes effect on filing.

(c) A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

SOURCES: Laws, 2012, ch. 382, § 9, eff from and after Jan. 1, 2013.

§ 79-35-10. Change of name, address, or type of organization by commercial registered agent [Effective January 1, 2013].

(a) If a commercial registered agent changes its name, its address as currently listed under Section 79-35-6(a), or its type or jurisdiction of organization, the agent shall file with the Secretary of State a statement of change signed by or on behalf of the agent which states:

(1) The name of the agent as currently listed under Section 79-35-6(a);

(2) If the name of the agent has changed, its new name;

(3) If the address of the agent has changed, the new address; and

(4) If the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of organization.

(b) The filing of a statement of change under subsection (a) of this section is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.

(c) A statement of change filed under this section takes effect on filing.

(d) A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.

(e) If a commercial registered agent changes its address without filing a statement of change as required by this section, the Secretary of State may cancel the listing of the agent under Section 79-35-6. A cancellation under this subsection has the same effect as a termination under Section 79-35-7. Promptly after canceling the listing of an agent, the Secretary of State shall serve notice in a record in the manner provided in Section 79-35-13(b) or (c) on:

(1) Each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in Section 79-35-13; and

(2) The agent, stating that the listing of the agent has been canceled under this section.

SOURCES: Laws, 2012, ch. 382, § 10, eff from and after Jan. 1, 2013.

§ 79-35-11. Resignation of registered agent [Effective January 1, 2013].

(a) A registered agent may resign at any time with respect to a represented entity by filing with the Secretary of State a statement of resignation signed by or on behalf of the agent which states:

(1) The name of the entity;

(2) The name of the agent; and

(3) That the agent resigns from serving as agent for service of process for the entity.

(b)(1) The statement of resignation shall include a certification of the registered agent that at least thirty (30) days prior to the filing of the statement of resignation written notice of the resignation of the registered agent was sent to each represented entity for which the registered agent is resigning as registered agent. This notice shall be addressed and delivered to the last known principal office of each represented entity identified in the statement. The agent shall indicate in the statement each name and address to which the notice was sent. After receipt of the notice of resignation of its registered agent, the represented entity for which the registered agent was acting shall obtain and designate a registered agent.

(2) For purposes of this subsection, the “last known principal office” of the represented entity shall be the address of the entity on file with the Secretary of State’s office or the address most recently supplied to the agent by the entity, whichever is more current, or the actual principal office address if the actual address is known to the agent.

(c) A statement of resignation takes effect on the earlier of the thirty-first day after the day on which it is filed or the appointment of a new registered agent for the represented entity.

(d) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity has against the agent or that the agent has against the entity.

(e) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

SOURCES: Laws, 2012, ch. 382, § 11, eff from and after Jan. 1, 2013.

§ 79-35-12. Appointment of agent by nonfiling or nonqualified foreign entity [Effective January 1, 2013].

(a) A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the Secretary of State a statement appointing an agent for service of process signed on behalf of the entity which states:

(1) The name, type, and jurisdiction of organization of the entity; and

(2) The information required by Section 79-35-5(a).

(b) A statement appointing an agent for service of process takes effect on filing.

(c) The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.

(d) A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the Secretary of State from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the name of the entity filing the statement unavailable for use by another entity.

(e) An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which shall take effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state.

(f) A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

SOURCES: Laws, 2012, ch. 382, § 12, eff from and after Jan. 1, 2013.

§ 79-35-13. Service of process on entities [Effective January 1, 2013].

(a) A registered agent is an agent of the represented entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity.

(b) If an entity that previously filed a registered agent filing with the Secretary of State no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the governors of the entity will be treated as the entity's agent for service of process who may be served pursuant to the provisions of the Mississippi Rules of Civil Procedure. The names of the governors and the address of the principal office may be as shown in the most recent annual report filed with the Secretary of State. If the governors of the entity cannot with reasonable diligence be served, service of process against the entity shall be upon the Secretary of State in accordance with the Mississippi Rules of Civil Procedure.

(c) If notice or demand cannot be made on an entity pursuant to subsection (a) or (b) of this section, notice or demand may be made by handing a copy to the manager or other individual in charge of any regular place of business or activity of the entity.

(d) Notice or demand on a registered agent must be in the form of a written document, except that notice or demand may be made on a commercial registered agent in such other forms of a record, and subject to such require-

ments as the agent has stated from time to time in its listing under Section 79-35-6 that it will accept.

(e) Service of process, notice, or demand may be perfected by any other means prescribed by law other than this chapter, including provisions in the organic entity laws that provide for service of process on the Secretary of State in the event that registration of an organic entity has been canceled, withdrawn or revoked or the domestic organic entity has been administratively dissolved or voluntarily dissolved under the applicable organic entity statute.

SOURCES: Laws, 2012, ch. 382, § 13, eff from and after Jan. 1, 2013.

§ 79-35-14. Duties of registered agent [Effective January 1, 2013].

(a) The only duties under this chapter of a registered agent that has complied with this chapter are:

(1) To forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;

(2) To provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity;

(3) If the agent is a noncommercial registered agent, to keep current the information required by Section 79-35-5(a) in the most recent registered agent filing for the entity; and

(4) If the agent is a commercial registered agent, to keep current the information listed for it under Section 79-35-6(a).

(b) A person named as the registered agent for a represented entity in a registered agent filing pursuant to this chapter without the person's consent is not considered to be a "registered agent" of the entity for purposes of this chapter and therefore the person shall not have, and shall not be required to perform, the duties prescribed by this section with respect to the represented entity described in this subsection (b).

(1) In the event a person described in this subsection (b) is served with notice of service of process pursuant to Section 79-35-13(a), service on the person shall be deemed to be service on the entity that named the agent, even if the person does not forward the service to the entity.

(2) The person described in this subsection (b) shall have no responsibility to forward the service described in this subsection (b) to the entity, even if the person accepts the service by mistake; and the person further may not be held liable regardless of whether the person files a notice of nonacceptance with the Secretary of State:

(A) Under a judgment, decree, or order of a court, agency, or tribunal of any type, or in any other manner, in this or any other state, or on any other basis, for a debt, obligation, or liability of the represented entity, whether arising in contract, tort, or otherwise, solely because of the person's designation or appointment as registered agent; or

(B) To the represented entity or to a person who reasonably relied on the unauthorized designation or appointment solely because of the person's failure or refusal to perform the duties of a registered agent under this section.

(3) A person described in subsection (b) of this section may file a notice of nonacceptance with the Secretary of State's office for the purpose of removing the person's name from the records of the Secretary of State that relate to the entity described in subsection (b) of this section.

Upon the filing of the notice of nonacceptance, the Secretary of State shall notify the entity in writing of the nonacceptance. After receipt of the notice from the Secretary of State, the entity shall obtain and designate a registered agent.

SOURCES: Laws, 2012, ch. 382, § 14, eff from and after Jan. 1, 2013.

§ 79-35-15. Jurisdiction and venue [Effective January 1, 2013].

The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or proceeding involving the entity.

SOURCES: Laws, 2012, ch. 382, § 15, eff from and after Jan. 1, 2013.

§ 79-35-16. Consistency of application [Effective January 1, 2013].

In applying and construing this chapter, consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

SOURCES: Laws, 2012, ch. 382, § 16, eff from and after Jan. 1, 2013.

Comparable Laws from other States — Arkansas: A.C.A. § 4-20-101 et seq.

Hawaii: HRS § 425R-1 et seq.

Idaho: Idaho Code § 30-401 et seq.

Maine: 5 M.R.S. § 101 et seq.

Montana: Mont. Code Anno., § 35-7-101 et seq.

Nevada: Nev. Rev. Stat. Ann. § 77.010 et seq.

North Dakota: N.D. Cent. Code, § 10-01.1-01 et seq.

South Dakota: S.D. Codified Laws § 59-11-1 et seq.

Utah: Utah Code Ann. § 16-17-101 et seq.

§ 79-35-17. Relation to Electronic Signatures in Global and National Commerce Act [Effective January 1, 2013].

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USCS Section 7001 et

seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 USCS Section 7001(c), or authorize delivery of any of the notices described in Section 103(b) of that act, 15 USCS Section 7003(b).

SOURCES: Laws, 2012, ch. 382, § 17, eff from and after Jan. 1, 2013.

§ 79-35-18. Savings clause [Effective January 1, 2013].

This chapter does not affect an action or proceeding commenced or right accrued before January 1, 2013.

SOURCES: Laws, 2012, ch. 382, § 18, eff from and after Jan. 1, 2013.

§ 79-35-19. Designation of registered agent without consent; penalties and liabilities [Effective January 1, 2013].

In addition to other penalties, a person commits an offense if the person makes a false statement in a registered agent filing that names a person the registered agent of a represented entity without the person's written consent. The following penalties and liabilities shall apply with respect to a false statement in a registered agent filing made under this chapter that names a person the registered agent of a represented entity without the person's consent:

(1) Section 79-4-1.29 (Domestic Corporations); Section 79-4-15.30 (Foreign Corporations); Section 79-11-123 (Domestic Nonprofit Corporations); Section 79-11-385 (Foreign Nonprofit Corporations); Section 79-29-207 (Domestic Limited Liability Companies); Section 79-29-1019 (Foreign Limited Liability Companies); Section 79-13-1003 (Limited Liability Partnerships); Section 79-13-1106 (Foreign Limited Liability Partnerships); Section 79-14-207 (Domestic Limited Partnerships); Section 79-15-129 (Foreign Investment Trusts); and Section 79-16-27 (Foreign Business Trusts).

(2) The Secretary of State may commence a proceeding to administratively dissolve the domestic entity or to revoke the foreign entity's certificate of authority or similar certificate as prescribed by Section 79-4-14.20 (Corporations); Section 79-4-15.30 (Foreign Corporations); Section 79-11-347 (Nonprofit Corporations); Section 79-11-385 (Foreign Nonprofit Corporations); Section 79-13-1003 (Limited Liability Partnerships); Section 79-13-1106 (Foreign Limited Liability Partnerships); Section 79-29-809 (Limited Liability Companies); Section 79-29-1011 (Foreign Limited Liability Companies); Section 79-14-809 (Limited Partnerships); Section 79-14-910 (Foreign Limited Partnerships); Section 79-15-129 (Foreign Investment Trusts); and Section 79-16-27 (Foreign Business Trusts). Any entity that is administratively dissolved or whose certificate of authority is revoked pursuant to this paragraph shall not be reinstated unless it complies with the applicable statutory reinstatement requirements and unless it provides to the Secretary of State with its application for reinstatement a statement of appointment of registered agent signed by its appointed registered agent and an

additional reinstatement fee of Two Hundred Fifty Dollars (\$250.00), in addition to the applicable statutory reinstatement fee.

SOURCES: Laws, 2012, ch. 382, § 19, eff from and after Jan. 1, 2013.

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